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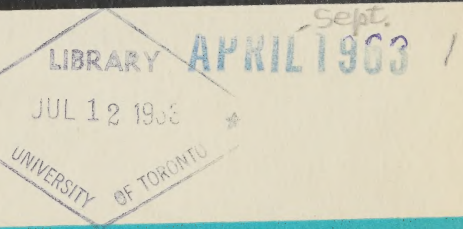
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MONTHLY REPORT



ONTARIO



ONTARIO LABOUR RELATIONS BOARD

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1963
Apr.-Sept.



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CASE LISTINGS APRIL 1963

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING APRIL 1963

Bargaining Agents Certified During April
No Vote Conducted

5206-62-R: Sheet Metal Workers' International Association, Local Union 568 (Applicant) v. International Cooperage Company of Canada Limited (Respondent).

Unit: "all employees of the respondent in the Township of Stoney Creek, save and except foremen, persons above the rank of foreman and office staff." (39 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 47)

5317-62-R: Teamsters Chauffeurs Warehousemen and Helpers Local No. 91, affiliated with the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Hershey Chocolate of Canada, Limited (Respondent) v. The Canadian Union of Operating Engineers (Intervener) v. United Packinghouse, Food and Allied Workers, AFL-CIO-CLC (Intervener).

Unit #1: "all stationary engineers employed by the respondent in the boiler room of its plant at Smiths Falls, save and except the chief engineer." (4 employees in the unit).

(GRANTED TO THE CANADIAN UNION OF OPERATING ENGINEERS).

5318-62-R: Hotel and Restaurant Employees Union, Local 743, affiliated with: Hotel and Restaurant Employees & Bartenders I.U., AFL-CIO, Canadian Labour Congress & Windsor & District Labour Council (Applicant) v. Hi-Ho Curb Serv-Us Limited. (Respondent).

Unit: "all employees of the respondent at its Walker Road location in Sandwich East Township, save and except manager, persons above the rank of manager, head chef, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (14 employees in the unit).

The Board endorsed the Record in part as follows:

"The Board recognizes that there may be a number of different units of employees which are appropriate for collective bargaining in any particular type of operation. In situations

where an employer has employees at more than one location in a geographic area the Board takes into account a number of factors in determining what constitutes an appropriate unit. More particularly, the Board considers whether there is interchange of employees between locations, the number of employees, and the type of operation carried on in each location. As well the Board takes into account the history of bargaining units in the particular type of operation. A further consideration is the desire of the parties.

In the instant case, the evidence revealed that the respondent owns and operates four other drive-in restaurants in the greater Windsor area. The applicant only applied for certification as bargaining agent for the employees of the respondent at one location. The respondent made no request that the unit include employees working at the other four locations. Also, the respondent stated that interchange of employees between the various locations very seldomly occurred. Moreover, there is no previous history in restaurant operations of including all employees at more than one location in the same bargaining unit."

Board Member M.C. Hay dissented and said:

"I dissent. The applicant having submitted evidence of membership for less than 45% of the employees in what I consider to be an appropriate bargaining unit, I would dismiss the application.

The evidence is that the Respondent, an incorporated company, owns and operates a chain of five drive-in restaurants in the greater Windsor area, two of which are located within the municipal limits of the City of Windsor, two are located in Sandwich East Township and one is located in Sandwich West Township.

The applicant seeks certification with respect to the employees at only one of the two locations within Sandwich East Township in a bargaining unit which it describes as

"all employees of the Respondent at 3691 Walker Road, Windsor (Sandwich East Township), save and except manager, persons above the rank of manager, Head chef, persons regularly employed for not

, more than twenty-four hours per week and students hired for the school vacation period. Geographic location: 3691 Walker Road, Windsor, (Sandwich East Township)"

In my view, the bargaining unit requested by the Applicant, confined as it is to one of five similar stores, all of which are located within a well defined, built-up metropolitan area, does not constitute an appropriate bargaining unit. On the contrary I find that a single bargaining unit comprising the employees of all five of the Respondent's drive-in restaurants located in metropolitan Windsor to be the appropriate bargaining unit for the reasons that:

1. All five drive-in restaurants
 - (a) are owned and operated by a common management,
 - (b) are similar, if not identical, in appearance, design and operation,
 - (c) are located within a well-defined, built-up readily identifiable, metropolitan area.
2. There is some interchange of managers and infrequent interchange of employees among the various locations.
3. Where a Respondent has only one location within a municipality at the time an application for certification is made, it is the usual practice of the Board to grant a bargaining unit designated as "all employees of the Respondent at (name of Municipality)", and to deny a Respondent's request that such designation be confined either to a street address or some other restricted designation within the municipality. The effect of this is that, should the Respondent Company, at a future time, add an additional outlet in a similar or related business within the geographical area thus designated by the certification, the employees of such new outlet are automatically swept in to the bargaining unit established by the certification and the trade union ipso facto has bargaining rights for such employees. This being so, it seems to

me to be a necessary and logical corollary that where such additional outlets are in existence at the time of the making of the Application for Certification, the employees of such outlets are equally as appropriately a part of the bargaining unit as they would be if the same outlets came into existence at a future time.

Accordingly, for the above reasons I would have found a single unit comprising the employees of all five locations to be the appropriate bargaining unit and inasmuch as the applicant submitted evidence of membership for less than 45% of the employees in such unit, I would dismiss the Application."

5421-62-R: Toronto Typographical Union, No. 91, I.T.U. (Applicant) v. Atwell Fleming Printing Company Limited (Respondent).

Unit: "all employees of the respondent in the composing department at its plant in Toronto, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

The Board endorsed the Record in part as follows:

"For purposes of clarity the Board declares that G. Forsyth is included in the bargaining unit. Although Forsyth states that he has authority to hire and fire and has exercised that authority, he discusses the matter with the plant manager and secures his consent prior to taking any action. In our opinion, his authority, in fact, is an authority to recommend. Further, Forsyth works along with and does the same jobs as other employees in the bargaining unit. In our view, his duties constitute those of a lead-hand. We accordingly find that Forsyth does not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act."

Board Member H.F. Irwin dissented and said:

"I dissent in respect of the inclusion in the bargaining unit of G. Forsyth, Night Shift Foreman in the Composing Room.

The status of Forsyth was in dispute at the hearing held on February 27th. The applicant union claimed he is a working foreman and should be

included in the bargaining unit. The respondent claimed that Forsyth is in complete charge of the Composing Room on the Night Shift and represents management in dealing with customers and employees and should be excluded from the bargaining unit. The Board, therefore, appointed an Examiner to enquire into and report to the Board on Forsyth's duties and responsibilities.

The Examiner's Report includes the following facts which are not disputed by the applicant:

1. Forsyth has been in the continuous employ of the company since 1944 when he was hired as an apprentice compositor.
2. In February, 1962, he was promoted to the position of foreman of the Composing Room on the Night Shift. His duties and responsibilities were pointed out to him at that time.
3. He is in complete charge of the Composing Room on the Night Shift. There is no other supervisor either below him or above him on the Night Shift. He reports directly to Mr. Abbs the plant manager.
4. Four employees work under his direction on the Night Shift consisting of one monotype operator, one proof-reader and two compositors.
5. Forsyth has the authority to "hire and fire" employees and has exercised this authority. He last hired a man in December, 1962. He last "fired" a man in October, 1962.
6. He has the authority to grant time-off to employees.

In my opinion, the "hiring and firing" of employees and acting as the sole representative of management on the night shift are the type of managerial functions contemplated under section 1(3)(b) of The Labour Relations Act. On the evidence before us, Forsyth clearly exercises these functions and, therefore, is not an employee for the purposes of the Act and I would exclude him from the bargaining unit.

Working foremen in printing establishments have been included in the bargaining unit by agreement of the parties or where the duties and responsibilities

did not disclose managerial functions. However, when the status of the employee is in dispute and the Board appoints an Examiner, I am obliged to deal with the matter on the evidence before me which I have done in this case."

5429-62-R: National Union of Public Service Employees (Applicant) v. The Corporation of the Town of Burlington (Respondent).

Unit: "all employees of The Corporation of the Town of Burlington employed in the Engineering Department, save and except the department head and those above the rank of department head." (20 employees in the unit).

(UNIT AGREED TO BY THE PARTIES).

5596-62-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union #736 (Applicant) v. Pigott Structures Limited (Respondent).

Unit: "all reinforcing rodmen in the employ of the respondent in the counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

(HAVING REGARD TO REPRESENTATIONS OF PARTIES AND TO ALL THE EVIDENCE, INCLUDING RESPONDENT'S LETTER DATED APRIL 2nd, 1963).

5606-62-R: Hamilton Typographical Union No. 129 (Applicant) v. The Moore Printery Limited (Respondent).

Unit: "all employees of the respondent at Hamilton engaged in composing room work, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

5610-62-R: The Canadian Union of Operating Engineers, Local 101 (Applicant) v. St. Joseph's Hospital (Respondent).

Unit: "all stationary engineers and their helpers employed in the boiler room of the respondent at its hospital in Toronto, save and except the chief engineer." (15 employees in the unit).

5638-62-R: International Woodworkers of America (Applicant) v. Maple Leaf Veneer Co. Limited (Respondent) v. International Union of Operating Engineers, Local 700 (Intervener).

Unit #1: "all employees of the respondent at its plant in the Township of Bentinck, save and except foremen, persons above the rank of foreman, office and sales staff, students employed for the school vacation period, and stationary engineers and persons primarily engaged as their helpers." (233 employees in the unit). (GRANTED TO APPLICANT).

Unit #2: "all stationary engineers and persons primarily engaged as their helpers employed by the respondent in the boiler room in its plant in the Township of Bentinck, save and except the chief engineer." (3 employees in the unit). (GRANTED TO INTERVENER).

5644-62-R: International Association of Machinists (Applicant) v. Aerosol Packaging of Canada Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, chemists, office and sales staff and persons regularly employed for not more than 24 hours per week." (14 employees in the unit).

5656-62-R: International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. Quality Furniture Company Limited, carrying on business under the firm name and style of Royal Furniture Mfrs. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office and sales staff." (19 employees in the unit).

5660-62-R: Local 316, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC, (Applicant) v. Doran's Beverage Company Limited. (Respondent).

Unit: "all employees of the respondent at Fort William, save and except foremen, persons above the rank of foreman and office staff." (12 employees in the unit).

5664-62-R: National Union of Public Employees, C.L.C., Local 808 (Applicant) v. The Board of Education for the Township of Etobicoke (Respondent).

Unit: "all employees of the respondent engaged in the operation of storekeeping, save and except foremen, persons above the rank of foreman and office staff." (4 employees in the unit).

5668-62-R: Food Handler's Local Union 175 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, (Applicant) v. Dean McLaughlin Foods Limited (Respondent).

Unit: "all employees of the respondent in his store at Oshawa, save and except store manager, persons above the rank of store manager, meat department employees, persons regularly employed during the school vacation period." (5 employees in the unit).

5669-62-R: Local Union 633 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. Dean McLaughlin Foods Limited (Respondent).

Unit: "all meat department employees of the respondent in his store at Oshawa, save and except store manager, persons above the rank of store manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (15 employees in the unit).

5670-62-R: United Packinghouse, Food and Allied Workers AFL-CIO-CLC (Applicant) v. Black Diamond Cheese Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (41 employees in the unit).

5684-62-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. J.M.N. Investments Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce & Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

5691-62-R: International Jewelry Workers Union, Local 44 (Applicant) v. Morton-Parker Limited (Respondent).

Unit: "all employees of the respondent at Trenton, save and except foremen, persons above the rank of foreman and office staff." (39 employees in the unit).

5694-62-R: American Federation of Grain Millers International Union, AFL-CIO, CLC (Applicant) v. Christie, Brown & Company Limited (Respondent).

Unit: "all employees of the respondent at its plant in London, save and except foremen, persons above the rank of foreman, office and sales staff." (5 employees in the unit).

5704-62-R: International Union of Operating Engineers, Local 793 (Applicant) v. Mills Steel Construction Company Limited (Respondent).

Unit: "all employees of the respondent in the erection department engaged in the operation of cranes, shovels, bulldozers and similar equipment, derricks, hoists and compressors, and those primarily engaged in the repairing and maintaining of same, in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"Although the applicant seeks a geographic area consisting of the Province of Ontario, as it did in the Leeds Richardson Company Limited Case, O.L.R.B. Monthly Report, March, 1963, it has not filed any further material in support of its contention. After duly considering the pattern of collective bargaining as evidenced by the various collective agreements, which the applicant has and which are on file with the Board, the Board further finds that all employees of the respondent in the erection department engaged in the operation of cranes, shovels, bulldozers and similar equipment, derricks, hoists and compressors, and those primarily engaged in the repairing and maintaining of same, in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining".

5705-62-R: United Steelworkers of America (Applicant) v. Fleet-Line Products Limited (Respondent).

Unit: "all employees of the respondent at Waterford, save and except foremen, persons above the rank of foreman and office staff." (14 employees in the unit).

5706-62-R: Retail, Wholesale and Department Store Union AFL:CIO:CLC (Applicant) v. Fisher's Bread Company Limited (Respondent).

Unit: "all employees of the respondent working at or out of its sales depot at Waterloo, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period." (25 employees in the unit).

5710-62-R: United Cement, Lime and Gypsum Workers International Union, C.L.C. (Applicant) v. General Concrete Limited (Respondent).

Unit: "all employees of the respondent at its Maple Division in the Township of Vaughan, save and except foremen, persons above the rank of foreman and office staff." (11 employees in the unit).

5711-62-R: United Cement, Lime and Gypsum Workers International Union, C.L.C. (Applicant) v. General Concrete Limited (Respondent).

Unit: "all employees of the respondent at its Gormley Division in the Township of Markham, save and except foremen, persons above the rank of foreman and office staff." (6 employees in the unit).

5714-62-R: The International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC (Applicant) v. The Holophane Company, Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except assistant foremen, persons above the rank of assistant foreman, office and sales staff and security guards." (18 employees in the unit).

5729-62-R: International Hcd Carriers, Building and Common Labourers' Union, Local 247 (Applicant) v. George and Asmussen (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Kingston and within a 25 mile radius from the city limits of the said City of Kingston, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

5733-62-R: Canadian Transportation Workers' Union, No. 200, National Council of Canadian Labour (Applicant) v. C.F. Aitchison Transport Limited (Respondent).

Unit: "all employees of the respondent at its Milliken Depot in the County of York, save and except foremen, persons above the rank of foreman and office staff." (16 employees in the unit).

5734-62-R: Restaurant, Cafeteria and Tavern Employees' Union, Local 254 of the Hotel & Restaurant Employees and Bartenders' International Union, AFL-CIO-CLC (Applicant) v. Vendomatic Services Limited (Respondent).

Unit: "all employees of the respondent in its Food Management Division in its commissary at 496 Evans Avenue, Toronto, save and except assistant manager, persons above the rank of assistant manager and office staff." (12 employees in the unit).

(UNIT AGREED TO BY THE PARTIES).

5735-62-R: ' United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Millbrook Industries Limited (Respondent).

Unit: "all employees of the respondent in Cavan Township, save and except foremen, persons above the rank of foreman and office and sales staff." (17 employees in the unit).

5738-62-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. P.A. Sherwood (Windows) Ltd. (Respondent.)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce & Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

5739-62-R: United Brotherhood of Carpenters and Joiners of America, Local 1988, 79 Abel Street Smiths Falls, Ontario (Applicant) v. Sirotek Construction Limited General Contractors 1305 Baseline Road Ottawa 3 (Respondent) v. United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Intervener) v. United Brotherhood of Carpenters and Joiners of America Local 2466, 390 Miller St. Pembroke, Ontario (Intervener).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

The Board endorsed the Record as follows:

The Board finds that this is an application for certification within the meaning of section 92 of The Labour Relations Act.

Despite the fact that the applicant has filed a recently signed collective agreement for the area which it seeks in this application, the remarks made in the Welcon Limited Case,

O.L.R.B. Monthly Report, December, 1962, p. 379, with respect to (1) the geographical jurisdiction of the applicant and (2) the "area" pattern for collective bargaining apply, in general, to the present case. The intervention of other carpenter locals belonging to the same District Council are further proof that geographical jurisdictions remain unsettled. It is equally clear that the applicant has no well-defined pattern of collective bargaining.

In these circumstances, therefore, we are of the opinion that the geographic area set out in the John Shore Construction Limited Case, File #5624-62-R is applicable to this case.

5742-62-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Manufacturers Plating Co. Ltd. (Respondent).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman and office staff." (14 employees in the unit).

5748-62-R: Food Handlers' Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, (Applicant) v. Steinberg's Limited. (Respondent).

Unit: "all employees of the respondent in its retail stores at Niagara Falls regularly employed for not more than 24 hours per week." (10 employees in the unit).

5752-62-R: International Brotherhood of Electrical Workers Local Union 2133 (Applicant) v. St. Lawrence Power Company (Respondent).

Unit: "all employees of the respondent at Cornwall, save and except superintendents, persons above the rank of superintendent, office and clerical staff." (14 employees in the unit).

5754-62-R: Sudbury General Workers Union, Local 101, Canadian Labour Congress (Applicant) v. Pawson's (Sudbury) Limited (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, car salesmen, service salesmen and office staff. (23 employees in the unit).

5792-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419 Warehousemen and Miscellaneous Drivers (Applicant) v. St. Lawrence Fish Market Co. Ltd. (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman and office and sales staff." (19 employees in the unit).

5802-63-R: Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Local Union No. 230, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Pigott Construction Company Limited (Respondent).

Unit: "all truck drivers in the employ of the respondent in Oshawa and in the Townships of Whitby and East Whitby, all in the County of Ontario, save and except foremen and persons above the rank of foreman." (4 employees in the unit).

5803-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419 Warehousemen and Miscellaneous Drivers (Applicant) v. Booth Fisheries Canadian Co. Limited. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office and sales staff."

The Board endorsed the Record as follows:

"For the purposes of clarity the Board declares that persons classified by the respondent as driver-salesmen are employees of the respondent included in the bargaining unit."

5809-63-R: International Molders and Allied Workers Union AFL.CIO.CLC. (Applicant) v. Sully Castings Limited (Respondent).

Unit: "all employees of the respondent at Richmond Hill, save and except foremen, persons above the rank of foreman, office and sales staff." (22 employees in the unit).

5814-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Beaton's Dairy Products Limited (Respondent).

Unit: "all driver salesmen of the respondent working at or out of Oshawa." (9 employees in the unit).

5815-63-R: The National Union of Public Employees, C.L.C. (Local 855)(Lindsay and District) (Applicant) v. Board of Water, Light & Power Commissioners of the Village of Fenelon Falls (Respondent).

Unit: "all employees of the respondent at Fenelon Falls, save and except supervisors, persons above the rank of supervisor and office staff." (6 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 55)

5821-62-R: International Hod Carriers Building and Common Labourers Union, Local #1089 (Applicant) v. Matthews Construction Company (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lambton, save and except non-working foremen, persons above the rank of non-working foreman." (12 employees in the unit).

5822-63-R: International Hod Carriers Building and Common Labourers Union, Local #493 (Applicant) v. Newman Bros. Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorous and in the unorganized townships of Parke and Awenge and in the townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

5824-62-R: International Hod Carriers Building and Common Labourers' Union of America, Local 607 (Applicant) v. Alcan Colony Construction Company (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

5828-63-R: United Brotherhood of Carpenters and Joiners of America, Local 1988 (Applicant) v. Able Construction Company Limited General Contractors (Respondent.)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, save and except non-working foremen, persons above the rank of non-working foreman and persons bound by a subsisting collective agreement between the parties covering Arnprior and a twenty mile radius from Arnprior Town Hall effective July 1st, 1962." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"Subsequent to the release of the telegram from The Ontario Labour Relations Board to the parties dated April 19th, 1963 it has come to the attention of the Board that there is a subsisting collective agreement between the parties effective from July 1st, 1962 covering

"all carpenters and carpenters'
apprentices in the employ of
Able Construction Company Limited,
in Arnprior, and within a twenty
mile radius of the Town Hall."

This agreement excludes non-working foremen and persons above the rank of non-working foreman and continues in effect until July 1st, 1963. Having regard to the fact that this agreement covers an area which includes the northerly portion of the County of Lanark the Board finds that all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, save and except non-working foremen, persons above the rank of non-working foreman and persons bound by a subsisting collective agreement between the parties covering Arnprior and a twenty mile radius from Arnprior Town Hall effective July 1st, 1962 constitute a unit of employees of the respondent appropriate for collective bargaining."

5858-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers, Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. D. McIntyre and Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of non-working foreman, office and sales staff." (7 employees in the unit).

5865-63-R: International Hod Carriers' Building & Common Labourers' Union of America, Local No. 1059 (Applicant) v. Sam Cosentino Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (31 employees in the unit).

CERTIFICATION GRANTED AFTER PRE-HEARING VOTE

5451-62-R: National Union of Public Employees (Applicant)
v. The Perley Hospital (Respondent).

Unit: "all employees of the respondent at its hospital in Ottawa, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (256 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians."

| | | |
|--|-----|-----|
| Number of names on revised eligibility list | | 159 |
| Number of ballots cast | 157 | |
| Number of spoiled ballots | 2 | |
| Number of ballots segregated (not counted) | 2 | |
| Number of ballots marked in favour of applicant | 89 | |
| Number of ballots marked as opposed to applicant | 64 | |

5604-62-R: International Union of Operating Engineers Local 796 (Applicant) v. Monarch Fine Foods Limited (Respondent).

Unit: "all stationary engineers employed by the respondent at its power plant in the Township of Etobicoke, save and except the chief engineer." (5 employees in the unit).

| | | |
|---|---|---|
| Number of names on eligibility list | | 5 |
| Number of ballots cast | 5 | |
| Number of ballots marked in favour of applicant | 5 | |
| Number of ballots marked in favour of Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America | 0 | |

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

5125-62-R: Loblaw Workers' Council (Applicant) v. Discount Foods Limited (Respondent) v. Retail Clerks International Association (Intervener). (GRANTED TO INTERVENER).

Unit: "all employees of the respondent at Cataraqui who are regularly employed for not more than 24 hours per week." (21 employees in the unit).

On February 7, 1963 the Board endorsed the Record as follows:

"This application came on for hearing before this Board on January 7th, 1963. The intervener had filed charges alleging irregular conduct on the part of the applicant. On request by counsel for the applicant, the hearing of the charges filed by the intervener was adjourned sine die in order to give the applicant an opportunity to meet the allegations of the intervener. By letter dated and delivered to the Board on January 8th, the intervener withdrew its charges in order to facilitate the holding of a representation vote. By letter dated and received by the Board on January 9th, counsel for the applicant filed charges alleging improper conduct by the respondent in its relations with the intervener. The matter came on for a continuation of hearing before this Board on January 29th.

There is insufficient evidence with respect to two of the three specific allegations of the applicant for this Board to make any finding. The remaining allegation is that R. Harley, manager of the respondent's store at Cataraqui, did give T.L. Rees, representative of the intervener, access to the names and addresses of the employees of the respondent in order to assist him in his organizing campaign.

According to the testimony of Rees, he entered the premises of the respondent at Cataraqui on December 29th and proceeded to count the names listed on the respondent's time sheet in order to determine the number of persons employed in the respondent's store. Harley appeared while Rees was making the count. When Rees informed him of the reason for his presence Harley invited him into the store office and handed him a list of the employees who were employed for not more than 24 hours per week. Rees counted the number of persons on the

list and left the premises. There is no conflict of any significance in the testimony of Laverna Maneilly, the head checker, who was in the store office during the entire period that Rees was in the office.

The said Laverna Maneilly also testified that she had provided J. N. Watson, the area representative of the applicant with a list or lists bearing the names of those persons employed at the respondent's store at Catarauqui.

The application of the intervener for certification is dated January 2nd, 1963, and was sent to the Board by registered mail on the same date. The combination applications for membership and receipt cards filed in support of the intervener's application are all dated either December 27th or December 28th.

In the circumstances of this case and on the evidence before us, this Board is not prepared to find that the conduct of the respondent in relation to the intervener constitutes a violation of section 10 of The Labour Relations Act.

The charges of the applicant are accordingly dismissed."

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| Number of names on revised eligibility list | | 11 |
| Number of ballots cast | 11 | |
| Number of ballots marked in favour of applicant | 0 | |
| Number of ballots marked in favour of intervener | 11 | |

5289-62-R: International Union of Operating Engineers
Local 796 (Applicant) v. Northern Electric Company Limited
(Respondent) v. Northern Electric Employee Association
Unit #6 (Intervener).

Unit: "all stationary engineers and persons primarily engaged as their helpers employed in the power house of the respondent in its manufacturing division in the County of Peel, save and except the chief engineer." (5 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 52).

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| Number of names on revised eligibility list | | 5 |
| Number of ballots cast | 5 | |
| Number of ballots marked in favour of applicant | 5 | |
| Number of ballots marked as opposed to applicant | 0 | |

5378-62-R: National Union of Public Service Employees (Applicant) v. Alderlea Services Limited (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen, persons above the rank of foreman and office staff." (39 employees in the unit).

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| Number of names on revised eligibility list | | 35 |
| Number of ballots cast | 37 | |
| Number of ballots segregated (not counted) | 2 | |
| Number of ballots marked in favour of applicant | 26 | |
| Number of ballots marked as opposed to applicant | 9 | |

5450-62-R: United Cement, Lime and Gypsum Workers International Union, C.L.C. (Applicant) v. Western Gypsum Products Limited (Respondent).

Unit: "all employees of the respondent at Clarkson, save and except foremen, persons above the rank of foreman and office staff." (37 employees in the unit).

On March 7, 1963 the Board endorsed the Record in part as follows:

"There were 37 employees of the respondent in the bargaining unit at the date of making of the application herein. The applicant filed evidence of membership, including receipts showing a \$1.00 payment in each case, on behalf of 22 employees, that is, for more than fifty-five per cent of the employees of the respondent in the bargaining unit at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure. The majority of these receipts showed on their face that payment had been made more than six months but less than one year prior to the date of making of the application. In accordance with its usual practice in such cases the Board directs that a representation vote be taken

among the employees of the respondent in the bargaining unit. See St. Lawrence Textiles Limited Case, (1957) C.C.H. Canadian Labour Law Reporter, 1955-59 Transfer Binder ¶16,063; C.L.S. 76-547."

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| Number of names on revised eligibility list | | 40 |
| Number of ballots cast | 39 | |
| Number of ballots marked in favour of applicant | 39 | |
| Number of ballots marked as opposed to applicant | 0 | |

5461-62-R: United Steelworkers of America (Applicant) v. Ferranti-Packard Electric Limited (Respondent) v. Ferranti-Packard Electric Employees' Association (Intervener).

Unit: "all employees of the respondent at St. Catharines, save and except foremen and assistant foremen, those above the rank of foreman, office cleaning staff, plant protection staff and office staff." (199 employees in the unit).

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| Number of names on revised eligibility list | | 203 |
| Number of ballots cast | 202 | |
| Number of spoiled ballots | 1 | |
| Number of ballots marked in favour of applicant | 109 | |
| Number of ballots marked in favour of intervener | 79 | |
| Number of ballots segregated | 13 | |

5462-62-R: United Packinghouse, Food and Allied Workers (Applicant) v. Kitchener Packers Co. Ltd. (Respondent) v. Kitchener Packers Co. Ltd. Employees' Assn. (Intervener).

(UNIT AGREED TO BY THE PARTIES)

Unit: "all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman, office and sales staff." (60 employees in the unit).

On March 14, 1963 the Board endorsed the Record in part as follows:

"The intervener is a newly-formed organization and its representative at the hearing informed the Board that the intervener has not adopted a constitution. In these circumstances the Board further finds that the intervener is not a trade union for the purposes of The Labour

Relations Act. (See the decision of the Board in the Drummond Transit Case, Ontario Labour Relations Board Monthly Report, February 1959, p. 31).

On September 12th, 1956, the Board certified International Union of Operating Engineers, Local 956, as the bargaining agent of certain employees of the respondent affected by this application. While conciliation services were granted to International Union of Operating Engineers, Local 956, with respect to these employees of the respondent on January 11th, 1957, the Board was informed by the respondent at the hearing in the instant matter that no collective agreement had been entered into between International Union of Operating Engineers, Local 956, and the respondent, and that this union has made no attempts to bargain since that time. Notice of the instant application was served upon International Union of Operating Engineers, Local 956, by registered mail on February 19th, 1963, and that union has not filed an intervention in this proceeding. On the basis of all the evidence before us, the Board further finds that International Union of Operating Engineers, Local 956, must be taken to have abandoned the bargaining rights it acquired under the Board's certificate of September 12th, 1956. Accordingly, the present application is properly before the Board with respect to those employees of the respondent for whom International Union of Operating Engineers, Local 956, had heretofore been the bargaining agent."

On April 9th, the Board further endorsed the Record in part as follows:

"Having regard to paragraph 2 of the Board's decision of March 14, 1963, the application for certification by the intervener is dismissed."

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| Number of names on revised eligibility list | | 59 |
| Number of ballots cast | 59 | |
| Number of spoiled ballots | 1 | |
| Number of ballots marked in favour of applicant | 42 | |
| Number of ballots marked as opposed to applicant | 16 | |

5502-62-R: National Union of Public Service Employees (Applicant) v. The Board of Education for the Township of Scarborough (Respondent) v. Scarborough Board of Education Independent Caretakers' Association (Intervener).

Unit: "all employees on the caretaking, maintenance, and bus driving staffs of the respondent, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (409 employees in the unit).

On March 15, 1963 the Board endorsed the Record in part as follows:

"The intervener applied for certification as bargaining agent of a unit of employees of the respondent consisting of all employees on the caretaking staff of the respondent, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week. In this unit there would be a minimum of 338 employees at the time of the making of the application while, in the unit determined in paragraph 3 above, there would be a minimum of 409 employees. The intervener filed evidence of membership on behalf of 140 employees. In view of the provisions of subsection 2 of section 7 of The Labour Relations Act, the intervener would not be entitled to either certification or a representation vote in this unit or in the unit determined by the Board in paragraph 3. Accordingly the application for certification by the intervener is dismissed."

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| Number of names on revised eligibility list | | 406 |
| Number of ballots cast | 406 | |
| Number of spoiled ballots | 2 | |
| Number of ballots marked in favour of applicant | 226 | |
| Number of ballots marked as opposed to applicant | 178 | |

5541-62-R: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 124, Ottawa and Hull (Applicant) v. J. A. Jones Construction Company (Canada) Limited. (Respondent).

Unit: "all cement masons and cement masons' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

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| Number of names on revised eligibility list | | 11 |
| Number of ballots cast | 11 | |
| Number of spoiled ballots | 2 | |
| Number of ballots marked in favour of applicant | 6 | |
| Number of ballots marked as opposed to applicant | 3 | |

5587-62-R: Local 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America AFL.CIO.CLC. (Applicant) v. Canadian Breweries Limited, (Research Division) (Respondent).

Unit: "all employees of the respondent employed in the Quality Control Department of its Research Division in Toronto, save and except foremen, those above the rank of foreman, office staff, chemists, bacteriologists, and cafeteria help." (24 employees in the unit).

(UNIT AGREED TO BY THE PARTIES).

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| Number of names on revised eligibility list | | 23 |
| Number of ballots cast | 23 | |
| Number of ballots marked in favour of applicant | 18 | |
| Number of ballots marked as opposed to applicant | 5 | |

APPLICATIONS FOR CERTIFICATION DISMISSED - NO VOTE CONDUCTED

5571-62-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. W.J. Mowat Drug Delivery Service (Respondent). (24 employees).

The Board endorsed the Record as follows:

"At the hearing before the Board on March 21st, the representative of the applicant challenged the list of employees filed by the respondent in respect to this application. An examiner was appointed to inquire into and report to the Board on the respondent's list.

In accordance with the Board's direction, a meeting attended by representatives of the parties and the examiner took place on April 5th. The parties made the following agreement:

- (i) An appropriate bargaining unit would be all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff.
- (ii) The name of the spare driver, Tom Miller, should be added to the list, making a total of 25 persons in ~~the~~ unit as of March 5th, 1963.
- (iii) No formal report of the examiner would be required, but that a memorandum to the Board to expedite matters would be satisfactory.

The parties further agreed that they were satisfied that they had been given full opportunity to be heard and to introduce evidence bearing on the issues before the examiner.

In a letter dated April 5th which was received by the Board on April 8, the representative of the applicant who appeared at the hearing alleged that part-time help at the hearing was not considered a part of the bargaining unit and requested that the Board reverse the understanding reached at the April 5th meeting.

No determination was made by the Board at the hearing on March 21st with respect to employees regularly employed for 24 hours or less per week.

Since it was the representative for the applicant who at the hearing challenged the list of employees filed by the respondent and requested the appointment of an examiner, he cannot, subsequent to the examination of the list, be heard to object to any agreement arrived at by all parties.

The Board, therefore, in accordance with the agreement of the parties, finds that all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff, constitute a unit of employees of the respondent appropriate for collective bargaining."

5637-62-R: Local #303 International Brotherhood of Electrical Workers C.L.C. (Applicant) v. Omer F. Chaput (Respondent). (2 employees).

The Board endorsed the Record as follows:

"In assessing the weight to be given evidence of membership consisting of application cards and receipts showing money payment by the applicant on behalf of initiation fees, the Board has on many occasions in the past made it clear that what it is seeking is evidence of a financial sacrifice on his own behalf by an applicant for membership in the trade union. See for example the R.C.A. Victor Case, C.C.H. Canadian Labour Law Reports, Transfer Binder 1949-54, ¶17,067, C.L.S. 76-412; Dravo of Canada Limited, C.C.H. Canadian Labour Law Reports, Transfer Binder 1955-59, ¶16,109; and Vendomatic Services Limited, O.L.R.B. Monthly Report, October, 1961, p. 226.

In the present case it is quite clear that there has been no financial sacrifice made on their own behalf by any of the applicants for membership. The initiation fees were paid by their employer and the money was not intended as a loan to be repaid by the employees. In these circumstances no weight should be accorded the application cards filed by the applicant trade union.

We wish to point out that we are not finding that the applicant trade union was at fault in submitting the evidence of membership since there is no evidence to suggest that the representative of the applicant had any knowledge of the circumstances under which payment was made.

The application is dismissed."

5731-62-R: Canadian Steel Workers' Union, No. 179, National Council of Canadian Labour (Applicant) v. Sehl Engineering Ltd. (Respondent). (132 employees).

The Board endorsed the Record as follows:

"It appears to the Board on an examination of the records of the applicant and the records of the respondent that less than forty-five per cent of the employees of the respondent in any bargaining unit which the Board may deem to be appropriate at the time the application was made were members of the applicant at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure.

In view of these circumstances and in accordance with the provisions of section 45 of the Board's Rules of Procedure, the Board is of the opinion that the applicant has failed to make a prima facie case for the remedy requested and the application is therefore dismissed."

5794-63-R: The Royal Dairy Employees' Association, (Applicant) v. Chas. Yeates & Company Limited, (The Royal Dairy) (Respondent). (58 employees).

The Board endorsed the Record as follows:

"After this application came on for hearing, the applicant requested leave to withdraw. Having regard to the Board's usual practice in such circumstances the application must be dismissed."

APPLICATIONS FOR CERTIFICATION DISMISSED SUBSEQUENT TO
POST-HEARING VOTE

4393-62-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 880, affiliated with International Brotherhood of Teamsters Chauffeurs warehousemen and Helpers of America (Applicant) v. Sarnia Lumber & Builders Supply Ltd. (Respondent) v. United Brotherhood of Carpenters & Joiners of America, Local 3054 (Intervener).

Unit: "all employees of the respondent at Sarnia, save and except foremen, persons above the rank of foreman and office and sales staff." (4 employees in the unit).

On September 26, 1962 the Board endorsed the Record in part as follows:

"On November 28th, 1957, the intervener was certified as the bargaining agent of the employees of the respondent affected by this application and conciliation services were granted to these parties by the Board on January 3rd, 1958. The Board was informed that the intervener and the respondent negotiated the terms of a collective agreement but had not signed the same. On the basis of all the evidence before the Board, we are satisfied that the intervener took no steps to bargain further with the respondent on behalf of the employees of the respondent for whom it was certified as the bargaining agent. In these circumstances the Board finds that the intervener must be taken to have abandoned the bargaining rights it acquired under the Board's certificate of November 28th, 1957. Accordingly, the present application is properly before the Board."

On March 18, 1963 the Board further endorsed the Record in part as follows:

"The respondent submits that Joseph Badduke is a foreman and exercises managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act. Badduke has been employed by the respondent for four or five years. He was hired as a truck driver and, about two years ago, was transferred to yard No. 2 (the respondent's secondary outlet), at which time he was reclassified as "foreman" and told that he was in charge of this yard. He is the only regular employee in the yard. The other regular employee, Moffatt, is the "manager" of the yard and, while he looks after the office, he has some authority over Badduke. With respect to his own duties, Badduke says that he serves customers, both in the yard and in the store, and handles

materials delivered to the yard unless sthey are handled mechanically, that is, dumped by dump truck. Badduke also says that his responsibilities include "the hiring of an extra man or two on a temporary basis when he decides it is necessary." He also states that he has "fired" unsatisfactory temporary employees and has authority to grant time off to them. However, when he hires such employees, he does so sometimes with the prior knowledge of the general manager. His evidence is that he has never had more than one or two at a time and that it is "most usual for him not to have employees working under him (i.e. usually he does not need temporary help)". His method of hiring is to personally telephone the National Employment Service. When the men report to him, he puts them to work and informs the bookkeeper at head office "to have them put on the payroll". He does not have any control over their rates of pay but merely reports their time. Having regard to the casual mode of hiring temporary help for this yard, the infrequency of such hiring, and the slight supervision exercised by Badduke over the temporary help in the sense that he records their working time and tells them when the need for extra help no longer exists, we are of opinion that his duties cannot be construed as the exercise of a managerial function within the meaning of The Labour Relations Act. Accordingly, we find that Joseph Badduke is an employee of the respondent included in the bargaining unit determined in the Board's direction of September 26th, 1962, and was eligible to vote in the representation vote held herein on November 1st, 1962."

Board Member H. F. Irwin dissented and said:

"I dissent. In my opinion the authority to hire and discharge temporary employees and to grant them time off is the exercise of a managerial function within the meaning of The Labour Relations Act. Accordingly, I would have found that Joseph Badduke is not included in the bargaining unit, that he was not eligible to vote in the representation vote held herein, and that his segregated ballot be destroyed and not counted."

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| Number of names on revised eligibility list | | 6 |
| Number of ballots cast | 6 | |
| Number of ballots segregated | 1 | |
| Number of ballots marked in favour of applicant | 2 | |
| Number of ballots marked as opposed to applicant | 3 | |

5389-62-R: Retail, Wholesale and Department Store Union (Applicant) v. Waddell's Sound & Radio Limited (Respondent) v. Waddell's Employees' Association (Intervener). (APPLICANT & INTERVENER DISMISSED).

Unit: "all employees of the respondent, save and except directors and officers of the Company, secretary to the president and department heads." (34 employees in the unit).

The Board endorsed the Record in part as follows:

"In its decision dated February 22nd, 1963, the Board found that the intervener, Waddell's Employees' Association was the bargaining agent of the employees of the respondent in the bargaining unit provided for in the recently expired collective agreement between the respondent and the intervener. Having regard to the fact that this intervener is already the bargaining agent for the group of employees for which it is seeking to be certified, its application must be dismissed. (See also the Loblaw Groceries Case, (1944) D.L.S. 7-1115.)"

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| Number of names on revised eligibility list | | 29 |
| Number of ballots cast | 29 | |
| Number of ballots marked in favour of applicant | 10 | |
| Number of ballots marked in favour of intervener | 19 | |

5416-62-R: The International Union of Electrical, Radio and Machine Workers, AFL:CIO:CLC. (Applicant) v. Guildline Instrument Limited (Respondent).

Unit: "all employees of the respondent at Smiths Falls, save and except foremen, persons above the rank of foreman and office staff." (50 employees in the unit).

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| Number of names on revised eligibility list | | 51 |
| Number of ballots cast | 50 | |
| Number of ballots spoiled | 1 | |
| Number of ballots segregated (not counted) | 2 | |
| Number of ballots marked in favour of applicant | 19 | |
| Number of ballots marked as opposed to applicant | 28 | |

5527-62-R: International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW) (Applicant) v. Jas. H. Matthews and Co. (Canada) 1959 Ltd. (Respondent).

Unit: "all employees of the respondent at Oakville, save and except foremen, persons above the rank of foreman and office staff." (27 employees in the unit).

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| Number of names on revised eligibility list | | 25 |
| Number of ballots cast | 25 | |
| Number of ballots marked in favour of applicant | 11 | |
| Number of ballots marked as opposed to applicant | 14 | |

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL 1963

5676-62-R: United Steelworkers of America (Applicant) v. Midland Screw and Gear Company Limited (Respondent). (8 employees).

5730-62-R: International Hod Carriers', Building and Common Labourers' Union of America, Local 527 (A.F.L.-C.I.O.) (C.L.C.) (Applicant) v. Thomas G. Fuller Limited (Respondent) v. Canadian Construction Workers' Union, Division No. 1, N.C.C.L. (Intervener). (14 employees).

5732-62-R: Canadian Transportation Workers' Union, No. 200, National Council of Canadian Labour (Applicant) v. Van's Cartage & Storage (Respondent). (7 employees).

5741-62-R: District 50, United Mine Workers of America (Applicant) v. Sacco Foundry Limited (Belleville) (Respondent). (34 employees).

5914-63-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Dominion Auto Carriers Limited (Respondent) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 880 (Intervener). (26 employees).

5917-63-R: International Hod Carriers', Building and Common Labourers' Union of America, Local 527 (A.F.L.-C.I.O.) (C.L.C.) (Applicant) v. Eastern Construction Company Limited (Respondent (3 employees)).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING APRIL 1963

5261-62-R: Anthony Muscat (Applicant) v. Amalgamated Meatcutters & Butcher Workmen of North America (AFL-CIO) (Respondent) v. Hide Trading Limited, (Intervener). (DISMISSED). (19 employees).

(Re: Hide Trading Limited,
Toronto, Ontario)

The Board endorsed the Record as follows:

"The document relied on by the applicant as constituting evidence of the voluntary significations of the employees that they no longer wish to be represented by the respondent trade union was presented to and signed by the employees at a meeting held during working hours in a dressing room in the employer's warehouse at Tecumseh Street. None of the employees who attended the meeting suffered any loss of pay or was reprimanded or spoken to by his employer for being away from work. It is significant that six of the employees who attended this meeting worked at and came to the meeting from the employer's premises on St. Clair Avenue. Further, they were absent from their work at St. Clair Avenue for a period of approximately two hours during the time it took them to travel to, attend, and return to their jobs after the meeting.

While we are told that none of the employees asked for or obtained permission from the employer to hold the meeting during working hours in the dressing room, the inference is

inescapable that management knew that the meeting was being held and approved of it. Moreover, whatever the true facts of the situation, it is manifest that the circumstances in which the meeting was held probably had such an ostensible meaning to the employees, as to lead them to conclude that their employer favoured and supported the petition and would likely know the identity of those who signed it.

Having regard to all the evidence, we are unable to find that the document constitutes reliable evidence of the voluntary significations of the signatories that they no longer wish to be represented by the respondent trade union. The application is dismissed."

5285-62-R: Ronald Hetu (Applicant) v. General Truck Drivers' Union, Local 938, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F. of L. (Respondent). (DISMISSED). (27 employees).

(Re: Commercial Cartage Company,
Metropolitan Toronto)

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| Number of names on revised eligibility list | | 22 |
| Number of ballots cast | 22 | |
| Number of ballots marked in favour of respondent | 12 | |
| Number of ballots marked as opposed to respondent | 10 | |

5309-62-R: Lorne Smith and Bernard Lawrence (Applicant) v. General Truck Drivers' Union, Local No. 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A.F. of L. (Respondent). (GRANTED). (9 employees).

(Re: H.C. Stone & Sons Limited,
Toronto, Ontario)

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|---|---|---|
| Number of names on revised eligibility list | | 9 |
| Number of ballots cast | 9 | |
| Number of ballots marked in favour of respondent | 1 | |
| Number of ballots marked as opposed to respondent | 8 | |

5352-62-R: P. Chapman Cartage Employees (Applicant) v. Warehousemen and Miscellaneous Drivers Union Local 419, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (GRANTED). (27 employees).

(Re: Chapman Cartage,
Toronto, Ontario)

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|---|----|----|
| Number of names on revised eligibility list | | 23 |
| Number of ballots cast | 23 | |
| Number of ballots marked in favour of respondent | 2 | |
| Number of ballots marked as opposed to respondent | 21 | |

5391-62-R: The employees of Fielder Paper Box Co. Ltd., Toronto (Applicant) v. The Printing Specialties & Paper Products Union Local 466 (Respondent). (GRANTED). (80 employees).

(Re: Fielder Paper Box Co. Ltd.,
Metropolitan Toronto)

| | | |
|---|----|----|
| Number of names on revised eligibility list | | 66 |
| Number of ballots cast | 66 | |
| Number of ballots spoiled | 1 | |
| Number of ballots marked in favour of respondent | 8 | |
| Number of ballots marked as opposed to respondent | 57 | |

5424-62-R: Douglas Jackson (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union #880 (Respondent).

(Re: B-N Door Manufacturing Company of Canada Ltd.,
Chatham, Ontario).

5425-62-R: George Hitchmough (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union #880 (Respondent).

(Re: B-N Door Manufacturing Company of Canada Ltd.,
Chatham, Ontario).

5426-62-R: Earl D. Bond (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union #880 (Respondent).

(Re: B-N Door Manufacturing Company of Canada Ltd.,
Chatham, Ontario).

(4 employees involved in the above applications).

The above applications are consolidated.

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| Number of names on revised eligibility list | | 3 |
| Number of ballots cast | 3 | |
| Number of ballots marked in favour of respondent | 0 | |
| Number of ballots marked as opposed to respondent | 3 | |

5479-62-R: Dupont I.G.A. Food Liner (Applicant) v. Retail Clerks International Association (Respondent). (GRANTED).
(7 employees).

(Re: Dupont I.G.A. Food Liner,
Toronto, Ontario)

The Board endorsed the Record as follows:

"At the hearing the solicitor for the applicant informed the Board that the last meeting between the representative of the respondent union and the representatives of the applicant had been "four or five months ago" and that, in his presence at that meeting, the representative of the respondent informed the applicant that "the union did not have the support of the employees". The Board was further informed that there has been no further communication from the respondent, either to the applicant or to its solicitors, since that meeting and that an application for conciliation services by the respondent had been withdrawn by leave of the Board. On March 5th, 1963, the respondent informed the Board by telegram that "the Retail Clerks International Association do hereby relinquish the bargaining rights of Dupont IGA employees".

On the basis of all the evidence before it and having regard to the representations of the solicitor for the applicant, the Board is satisfied that the respondent, after having commenced to bargain but before the Board has granted a request for conciliation services, has allowed a period of sixty days immediately prior to the date of the application herein to elapse during which it has not sought to bargain.

Pursuant to section 45(2) of The Labour Relations Act and in view of the representations of the respondent, the Board declares that the respondent no longer represents the employees of Dupont I.G.A. Food Liner at Toronto for whom it has heretofore been the bargaining agent."

5498-62-R: Elliott Marr Company Ltd. Employees (Applicant) v. Retail, Wholesale and Department Store Union, Local 414, AFL:CIO:CLC (Respondent) v. Elliott Marr Company Ltd. (Intervener). (GRANTED). (28 employees).

(Re: Elliott Marr Company Ltd.,
London, Ontario).

| | | |
|---|----|----|
| Number of names on revised eligibility list | | 26 |
| Number of ballots cast | 26 | |
| Number of ballots marked in favour of respondent | 2 | |
| Number of ballots marked as opposed to respondent | 24 | |

5528-62-R: William Louis Besserer (Applicant) v. Milk & Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent).

(Re: The Walker Bakeries Limited,
Ottawa, Ontario).

| | | |
|---|----|----|
| Number of names on revised eligibility list | | 49 |
| Number of ballots cast | 49 | |
| Number of ballots marked in favour of respondent | 10 | |
| Number of ballots marked as opposed to respondent | 39 | |

5652-62-R: The employees of Amerwood Limited (formerly Amerwood (Eastern) Canada Limited) save and except foremen, persons above the rank of foreman and office staff (Applicant) v. International Woodworkers of America (Respondent). (GRANTED). (20 employees).

(Re: Amerwood Limited,
Owen Sound, Ontario)

5743-62-R: Anthony Dalton, Carl Blocka, William Earls, L. F. Callegari, Ronald Lawrence, Stephen Donoghue, Frank Verkaik, (Applicants) v. Motion Picture Projectionists Union Local 173 (Respondent). (GRANTED). (8 employees).

(Re: Trans Canada Telemeter,
Etobicoke, Ontario)

5818-63-R: The Brown Brothers, Limited (Applicant) v. Office Employees International Union Local 131 AFL-CIO (Respondent). (GRANTED). (50 employees).

(Re: The Brown Brothers Limited,
Toronto, Ontario)

5843-63-R: Central House Ltd. 458 Queen St. East Sault Ste. Marie, Ontario (Applicant) v. The Hotel, Restaurant Employees & Bartenders Int. Union Local 412, Sault Ste. Marie, Ontario (Respondent). (DISMISSED). (5 employees).

(Re: Central House Ltd.,
Sault Ste. Marie, Ontario)

The Board endorsed the Record as follows:

"On April 10th, 1963, the applicant made application for a declaration terminating bargaining rights of the respondent pursuant to the provisions of section 45(2) of The Labour Relations Act which reads as follows:

"Where a trade union that has given notice under section 11 or section 40 or that has received notice under section 40 fails to commence to bargain within sixty days from the giving of the notice, or after having commenced to bargain but before the Board has granted a request for conciliation services,

allows a period of sixty days to elapse during which it has not sought to bargain, the Board may, upon the application of the employer or any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit."

The Board granted conciliation services to the parties in this matter on December 3rd, 1962.

The parties last met and bargained on February 5th, 1963 with a conciliation officer present.

Although more than sixty days have elapsed since February 5th, 1963 during which the respondent has not sought to bargain, the Board is of opinion that the applicant is precluded from seeking the relief under section 45(2) of the Act due to the fact that the Board had granted the respondent's request for conciliation services.

The application is accordingly dismissed."

APPLICATION FOR DECLARATION CONCERNING STATUS OF SUCCESSOR
TRADE UNION

5645-62-R: Local 466, Printing Specialties and Paper Products Union (Applicant) v. Collett-Sproule Boxes, a Division of Oxford Paper Boxes Limited (Scarborough) (Respondent) v. Collett-Sproule Employees Association (Predecessor).
(GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that applicant is by reason of a merger, amalgamation or a transfer of jurisdiction, the successor to Collett-Sproule Employees Association, which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Collett-Sproule Boxes, a Division of Oxford Paper Boxes Limited and Collett-Sproule Employees Association signed June 16th, 1961 and effective from May 21st, 1961."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING
APRIL 1963

5184-62-U: National Refractories Ltd. (Applicant) v. Don Falardeau et al (Respondents). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondents, Don Falardeau, Joe Stando, Gaston Corriveau, Leendert Van Vliet, Gerrit Masmeyer, Andrew Balint, Ralph Croce, Armand La Marche, Gaston Toulouse, Antonio Chiavaroli and Antonio Geremia, for the following offences alleged to have been committed:-

That contrary to sections 54(2) and 69 of The Labour Relations Act the respondents did between on or about the 4th day of December, 1962, and the 12th day of December, 1962, in combination or in concert or in accordance with a common understanding engage in a cessation of work.

The appropriate document of consent will issue."

5465-62-U: Retail Wholesale and Department Store Union AFL-CIO-CLC and Ronald J. Gamble (Applicants) v. Windsor Office Supply Limited Windsor Ontario (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondent, Windsor Office Supply Limited, for the following offence alleged to have been committed:-

That contrary to sections 50(a) and 69 of The Labour Relations Act the respondent did between on or about the 26th day of November, 1962, and December 5th, 1962, discriminate against Ronald J. Gamble, an employee, in regard to his employment or

the terms or conditions thereof because he was a member of a trade union or was exercising rights under The Labour Relations Act.

The appropriate document of consent will issue."

5675-62-U: United Packinghouse, Food and Allied Workers AFL-CIO-CLC (Applicant) v. Kitchener Packers Co. Ltd. and Kitchener Packers Co. Ltd. Employees' Association (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING
APRIL 1963

5019-62-U: International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC (Complainant) v. Generator & Electric Co. Ltd. (Respondent).

5021-62-U: International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC (Complainant) v. Generator & Electric Co. Ltd. (Respondent).

5024-62-U: International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC (Complainant) v. Generator & Electric Co. Ltd. (Respondent).

The Board endorsed the Record as follows:

"The complainant complains that Rocko Marciano, Luigi Scarfo and Carrado Cianchino were discharged by the respondent contrary to the provisions of The Labour Relations Act.

Following an application for certification by the complainant, to be certified as bargaining agent for certain employees of the respondent, the respondent received a communication from the Board advising the respondent of the application for certification. Upon receipt of this advice from the Board, the respondent called a meeting of its employees in the lunch room on Wednesday, November 21st, 1962, at which meeting the employees were advised of the application by the general manager. The general manager advised the employees that he didn't know too much about union matters and the employees were then asked to form two groups. Those supporting the application

of the union were asked to form one group and those opposing the application were asked to form the second group. The names of the employees forming the two groups were taken down in alphabetical order by the respondent's general manager. In explanation of his actions in calling the employees together, the general manager advised that, having read the paper hurriedly, he concluded that the Board wanted to know how many of the respondent's employees were supporting the application for certification and it was for this reason that he asked the employees to form two groups, for and against the union. After he listed the names of the employees in the two groups, he started to complete the forms to be returned to the Board and found it necessary to telephone the Registrar for information as to the Board's requirements. The Registrar clarified the Board's instructions which were contained in the material forwarded to the respondent with the notice of the application for certification and the forms were then properly completed and returned to the Board by the respondent. The respondent further testified that the information about union membership was not used against the employees in any way. In obtaining this information, the respondent's general manager erroneously thought he was following the instructions of the Board.

At the outset of the hearing, the general manager advised the Board and the complainant that Mr. Scarfo and Mr. Marciano had not been terminated but had been laid off for lack of work and the respondent undertook to recall Mr. Scarfo and Mr. Marciano when the volume of work warranted such recall and the respondent anticipated that business would increase by the latter part of January or the first part of February to the extent that the respondent would find it necessary to recall Mr. Scarfo and Mr. Marciano. In addition, the respondent also indicated that, although it felt it had sufficient grounds for dismissing Mr. Cianchino, in order to settle the matter it was prepared to recall Mr. Cianchino on the same basis.

The respondent stated that although it tried to avoid lay-offs in previous years, the lay-offs were necessitated at this time due to the fact that in September the respondent had moved to new and larger premises and it purchased new machinery and as a result of these increased expenditures, the respondent had not the capital reserves at its disposal which it had enjoyed in previous years. The general manager of the respondent testified that during the months of October, November and December, 1962 the respondent had grossed \$32,000.00, \$29,000.00 and \$26,000.00 respectively in each of the three months, whereas it required \$40,000.00 a month to break even. The general manager further testified that its inventory stock was of a reasonable volume and because of the respondent's shortage of cash and lack of business, it found it necessary to lay off some of its employees.

The general manager of the respondent further testified that the decision to lay off employees was made during the week of November 10th, but the choice of the employees to be laid off was made during the week-end immediately prior to November 26th. In determining who should be laid off, the respondent decided to cut down its staff in all departments, and after considering the employees in the various departments, took into consideration, among other things, the seniority of the employees, their ability to perform their work and the amount paid to the employees and with these factors in mind chose the persons in the various departments who were to be laid off. The general manager testified that the union membership of the employees was not considered by the respondent in determining who should be laid off.

The respondent's general manager stated that the three aggrieved persons were laid off together with 10 other employees. Of the 13 employees laid off, 10 employees have already returned to work, bringing the total number of employees to 53. The fact that 9 of those laid off were union members was a natural mathematical result due to the fact that the majority of the respondent's employees

were union members and it therefore followed that the majority of the persons laid off would also be union members.

Apart from the evidence that the respondent was aware of the union membership of the three aggrieved persons in the same way it was aware of the union membership of other employees, there was no evidence that the three aggrieved persons were more active in support of the union or were in any different position in relation to the union than the other employees of the respondent who were union members.

During the afternoon of November 21st, Mr. Cianchino was advised that he was laid off for three or four days and the following Friday when he returned to the respondent's plant to collect his pay, he was further advised by the respondent that he would be laid off from two or three days to one week because of lack of work.

On Monday, November 26th, on reporting to work, Mr. Marciano and Mr. Scarfo were told that there was no work available at that time and that they were laid off. They were further advised that they would be laid off for a week or ten days.

Mr. Scarfo was chosen for lay-off because there is another employee in the department who is paid 10 cents less per hour than Mr. Scarfo and in addition has a better command of the English language. The respondent therefore considered that the lay-off of Mr. Scarfo rather than the other employee was in the best interest of the company.

Marciano was chosen for lay-off because the other person retained in employment was far superior to Mr. Marciano. The person retained in employment had previously worked with the respondent and the respondent had asked that person to return to work for the respondent approximately three months ago and although from the time of his re-employment with the respondent he has less seniority than Mr. Marciano, his ability to do his work far exceeds the ability of Mr. Marciano. For this reason Mr. Marciano was designated by the respondent to be laid off.

Mr. Cianchino was laid off on Wednesday, November 21st and was therefore not included in the general lay-off which took place on November 26th. The reason for the lay-off of Mr. Cianchino was the fact that Mr. Cianchino had been caught padding his piece work production. After Cianchino went on piece work rate, at his own request, his wages jumped from about \$46.00 per week to about \$118.00 per week, which increase in Mr. Cianchino's weekly pay caused management to be suspicious and approximately two weeks before his lay-off, and before the application for certification was made, the respondent discovered that a great many items for which Mr. Cianchino had been paid had not been completed and had to be redone. Mr. Cianchino was required to complete the work for which he had already been paid and it was the intention of management to lay off Mr. Cianchino. The respondent testified that Mr. Cianchino is capable of good work, but that his work had to be checked to make sure that it was properly completed. Mr. Cianchino did not deny that he had been paid for work that was not properly completed by him and that this work had to be redone without compensation.

It is scarcely necessary to point out that causing union members to reveal their identity is subject to criticism and such action makes the subsequent actions of the respondent to be suspect. Nevertheless, having regard to the demeanour of the witnesses in the witness box, the manner in which they gave their evidence, their frankness and sincerity, we are of opinion that the general manager of the respondent is a truthful witness and we choose to believe his evidence that the aggrieved persons were laid off without reference to their union membership as alleged by the complainant. We therefore find that the choice of the persons to be laid off had no connection with their union membership or union activities.

We further find that the aggrieved persons were not discharged by the respondent contrary to The Labour Relations Act.

The complaints of the complainant are therefore dismissed."

Board Member G.R. Harvey dissented and said:

"I dissent."

In view of the uncontested evidence of accusation and threat made by the owner Upton to Marciano in which he accused Marciano of (1) 'starting the union' (2) stated 'he would not pay him that much (wages) in the future' I am unwilling to accept Manager Newton's explanation for his unusual misunderstanding of the Board's clear instructions when he conducted a group interrogation of employees to determine which of them supported the union.

In my opinion the evidence indicates the lay-offs, or discharges, were attributable to the decision of the employees to take union membership. I would order reinstatement without loss of pay to the earliest date of return of the ten recalled employees."

5392-62-U: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Complainant) v. National Automatic Vending Co. Ltd. (Respondent).

The Board endorsed the Record as follows:

"For the reasons given in writing our determination of the action to be taken by the respondent is as follows:-

1. The respondent shall forthwith reinstate and employ Arthur Proudfoot to the same or like employment with the same wages and employment benefits as he had, and received, prior to and up to the time of his discharge on February 1st, 1963.
2. As compensation for his loss of wages and employment benefits from February 1st, 1963, to and including March 28th, 1963, the respondent shall forthwith pay Arthur Proudfoot the sum of \$624.00.

3. The respondent and the complainant shall meet forthwith with a view to agreeing on the amount of loss of earnings and employment benefits, if any, now sustained or which may hereafter be sustained by Arthur Proudfoot between the date of the hearing on March 28th, 1963, and the date of his actual re-employment by the respondent. In default of an agreement between the parties within 7 days after the release of this determination or within such further period as the parties may mutually agree upon, the amount of any such further compensation payable, if any, will be determined by the Board upon the motion of either party for a further hearing for that purpose."

Board Member H.F. Irwin dissented and said:

"For the reasons given in writing I would have dismissed the complaint."

5597-62-U: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine Mill and Smelter Workers (Complainant) v. Avenue Hotel (Respondent).

5696-62-U: International Hod Carriers Building and Common Labourers Union of America, Local #607 (Complainant) v. Hacquoil Construction Ltd. (Respondent).

5700-62-U: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (A.F.L.-C.I.O.) (C.L.C.) (Complainant) v. Metcalfe Realty Company Limited (Respondent).

5712-62-U: Upholsterers' International Union of North America AFL-CIO, Local # 400 (Complainant) v. Toronto Bedding Company Limited (Respondent).

5747-62-U: Upholsterers' International Union of North America Local # 400 (Complainant) v. Toronto Bedding Company Limited (Respondent).

5753-62-U: Boot & Shoe Workers Union affiliated with The American Federation of Labour and the Congress of Industrial Organizations (Complainant) v. Emille Shoe Limited (Respondent).

5876-63-U: United Brotherhood of Carpenters & Joiners of America Local # 802 (Complainant) v. Reynolds Picture Framing (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

5206-62-R: Sheet Metal Workers' International Association, Local Union 568 (Applicant) v. International Cooperage Company of Canada Limited (Respondent). (GRANTED APRIL 1963).

The Board endorsed the Record as follows:

"This application for certification was made on January 9th, 1963, and the terminal date fixed for the application was January 17th, 1963. The respondent, through its solicitor, Mr. David L. G. Jones, Q.C., filed its reply on the terminal date and stated in part:-

several employees of the Respondent who have expressed opposition to the application for Certification of the Applicant Union have been intimidated and coerced by persons acting as officials and/or agents of the said Union.

Two statements in writing in opposition to the application were filed with the Board on the terminal date by Mr. James W. Hammond, solicitor for a group of employees, and, in his accompanying letter, Mr. Hammond stated in part as follows:-

I propose to introduce evidence at the hearing that a large number of the employees of the respondent, as indicated to, John Cerrello and Donald Gillespie, were strongly opposed to the certification of Sheet Metal Workers International Association, Local Union 568, as their bargaining agent, but because of threats of violence and intimidation by the applicant union and/or it's agents, they were afraid to actively participate in expressing their wishes.

The hearing in this matter was scheduled for January 23rd, 1963. On January 21st, 1963, Mr. Hammond, by telephone, requested a summons for Tony Giammarco and the Registrar forwarded it to him by ordinary mail on that day.

At the hearing on January 23rd, Mr. Hammond informed the Board that Giammarco was not present. Mr. Hammond also informed the Board that it was after 5 o'clock in the afternoon of January 22nd, the day before the hearing, when he caused the summons to be served on Giammarco, that Giammarco

attended his office at approximately 7 o'clock that evening, returned the conduct money and copy of the summons which had been served upon him , and advised him that he would not attend the hearing. At the hearing Mr. Jones also informed the Board that he had contacted the Registrar concerning a summons for Giammarco but, upon being informed by the Registrar that a summons had already been issued to Mr. Hammond, had not requested it. In view of the circumstances surrounding the service of the summons upon Giammarco, the Board adjourned the hearing for continuation on February 11th, 1963, in so far as it affected this matter only. The hearing, however, was continued with respect to all other aspects of the case.

Following the hearing on January 23rd, Mr. Ron. S. Taylor, the representative of the applicant, wrote to the Board in part as follows:-

I would advise you that in order to prepare a rebuttal, we would desire that more specific information with regards to the allegations and charges made by Mr. Hammond be made available to us.

On January 24th, 1963, the Registrar forwarded a copy of Mr. Taylor's letter to Mr. Hammond and requested him to supply the particulars requested by Mr. Taylor as soon as possible. The Registrar also forwarded a copy of Mr. Taylor's letter and a copy of his letter to Mr. Hammond to Mr. Jones. On February 1st, 1963, Mr. Taylor, by telephone, informed the Registrar that he had not received the particulars requested on January 23rd. The Registrar immediately contacted Mr. Hammond by telephone and the latter undertook to mail the particulars to the Registrar on that day. By letter dated February 5th, 1963, Mr. Hammond provided particulars as follows:-

In compliance with the Board's request herewith I wish to advise that some employees of the Respondent including one Tony Giammarco, have been threatened with personal violence if they sign the Petition that they circulated to oppose the Application for Certification.

Mr. Hammond also requested that summonses be issued for Tony Giammarco, John Cerello and George Sambo. On that date the Registrar forwarded the summonses as requested and also forwarded a copy of Mr. Hammond's letter of February 5th, 1963, to Mr. Taylor and to Mr. Jones.

At the hearing on February 11th, Mr. Taylor submitted that the particulars filed by Mr. Hammond contained no additional information in respect of the original allegations made against the applicant and were still not sufficient to enable him to know the case against the applicant so as to prepare a defence in the matter. Mr. Hammond stated that he could not provide the names of persons intimidated, other than that of Giammarco, "in view of the nature of the charges". Mr. Hammond then informed the Board that he did not know the names of the persons who engaged in the intimidation because the persons who had been intimidated would not disclose this information to him. He then submitted to the Board that the persons who had been intimidated "must talk if they are called before the Board". Mr. Jones, on the other hand, pointed out that he had not been requested to file particulars and stated that, if particulars had been sought, he would have stated that he could not supply such particulars.

Having regard to the representations of the parties, and on the basis of all the evidence before it, the Board stated that, in its opinion, it would be contrary to the principles of natural justice to require the applicant to proceed without adequate particulars of the case it had to meet. The Board pointed out, in particular, that there was no information as to the persons involved nor the times, places, nature or means of the intimidation and coercion complained of. Since both Mr. Hammond and Mr. Jones indicated that they were prepared to provide further particulars at this time, the Board, on agreement of the parties, granted a short adjournment during which the solicitors provided Mr. Taylor with the particulars hereinafter referred to.

The particulars provided by Mr. Hammond were as follows:-

In a conversation with John Cerello on the morning of Wednesday Jan 16 the witness, Tony Giammarco, stated in language that is present today as evidence [sic] that he would like to sign the petition but that he was afraid to do so because of threat of personal violence. This conversation took place on the job at International Cooperage Company of Canada Limited.

Also in a Conversation with John Cerello on Wednesday, the same day, George Sambo told Cerello that he did not want to get involved and other words indicating that pressure had been applied to prevent him from signing the petition. This conversation took place at the Respondent's premises as the shift was changing.

Donald Gillespie will give evidence of a conversation he had with Charles Stagnitta either on Mon. Jan. 14th or Tuesday, Jan 15th in which Stagnitta made remarks indicating that he had been intimidated against signing the petition.

I believe that this intimidation occurred as late as Jan. 30 when the Witness George Sambo who I talked to on the telephone did not appear for an appointment, as he agreed to, and since that time all efforts to contact him have failed.

The particulars supplied by Mr. Jones were as follows:-

Sometime between the 1st and 15th days of January 1963, one Tony Giammarco was approached by employees of the Respondent while at work on the Respondent's premises and threatened with physical violence if he signed a petition which was being circulated among the employees in opposition to the union.

The names of the individual employees are unknown and they can be identified only as the organizers of the union's organizational campaign.

The intimidation is continuing and has continued since that time at places and times unknown to the Respondent.

When the hearing resumed, Mr. Taylor submitted that the particulars given to him, including those filed by Mr. Hammond and by Mr. Jones at the hearing, were still not adequate. In so far as this aspect of the case was concerned, the Board thereupon adjourned the hearing sine die and heard no evidence with respect to the allegations.

The Board has to deal in the first place with the question of whether the particulars filed by Mr. Hammond and by Mr. Jones were adequate. It is obvious, of course, that the basis for requiring adequate particulars is to enable the party affected by the allegations to prepare its own case. As the Board pointed out in its decision in The Boake Manufacturing Co. Case, (1956) C.C.H. Canadian Labour Law Reporter, 1955-1959 Transfer Binder, ¶16,042; C.L.S. 76-512, the purpose of particulars is to enable opposing parties to the proceedings to know what case they have to meet at the hearing so as to save unnecessary expense, to avoid allowing the parties to be taken by surprise at the hearing and to ensure a fair hearing. Since the decision in The Boake Manufacturing Co. Case, the Board's practice with respect to particulars has been incorporated into its Rules of Procedure. Thus section 48 (1) of the Rules of Procedure provides that a party who intends to allege improper or irregular conduct by another party

shall file a notice of such intention which shall contain a concise statement of the material facts upon which he intends to rely in support of the allegation but not the evidence by which the material facts are to be proved.

In addition section 48 (4) provides that the above-mentioned statement of material facts shall include; -

- (a) the time when and the place where the acts or omissions complained of occurred; and
- (b) the names of the persons who engaged in or committed them.

The test for determining the adequacy of particulars is explicit in section 47 (2) of the Board's Rules of Procedure, namely, whether the statement of material facts is so indefinite or incomplete as to hamper

the applicant in the preparation of its case. This means that the party charged must be in a position to prepare for the cross-examination of witnesses called by the party making the charges and to know what witnesses it has to have available in rebuttal. The particulars provided here by Mr. Hammond and by Mr. Jones do not disclose the specific person or persons against whom the charges are made nor any details as to the times when or the places where the alleged coercion and intimidation occurred, nor are these matters, or any of them, readily identifiable from the information contained in the particulars. The only information made available to the applicant is the names of the persons who will be called as witnesses to testify against the applicant. We therefore find that the particulars filed by Mr. Hammond and by Mr. Jones are not adequate and that the applicant is so seriously hampered in the preparation of its case that a fair hearing could not ensue.

Since the group of employees and the respondent have each made a general allegation of misconduct against the union, it was incumbent upon their counsel, in accordance with the long-established practice and procedure of the Board, to assume the responsibility of providing adequate particulars in respect of their allegations and of leading evidence in support thereof at a hearing before the Board and, indeed, the case was adjourned to afford them an opportunity to do so. While Mr. Hammond had witnesses present at the continuation of the hearing, it is clear, in the circumstances of this case, that if the Board had allowed him to examine these witnesses, the Board would be permitting a party to examine its own witnesses at the hearing before the Board solely for the purpose of ascertaining whether there were any facts on which to formulate allegations against an opposing party. In our view, the hearing before the Board can not be utilized for this purpose and to allow such usage would open the processes of the Board to abuse."

5289-62-R: International Union of Operating Engineers Local 796 (Applicant) v. Northern Electric Company Limited (Respondent) v. Northern Electric Employee Association Unit #6 (Intervener). (GRANTED APRIL 1963).

On February 27, 1963, the Board endorsed the Record in part as follows:

" The applicant seeks to carve out a bargaining unit of stationary engineers from an "all employee" unit for which the intervener is the bargaining agent. Counsel for the intervener submits that the Board should exercise its discretion under subsection 2 of section 6 of The Labour Relations Act and not apply the mandatory part of this subsection in the circumstances of this case. The respondent also opposes the application.

On November 3rd, 1961, the intervener was certified as the bargaining agent of all employees of the respondent in its manufacturing division in the County of Peel with exceptions not here material. On February 9th, 1962, the intervener and the respondent made a collective agreement covering "all hourly rated, non-supervisory employees" of the respondent in its manufacturing division in the County of Peel. This agreement became effective on February 26th, 1962, and remained in effect until February 25th, 1963, and thereafter subject to notice of amendment or termination. The respondent had no stationary engineers in its employ on either the date of certification or the date of making of the agreement. During November, 1962, the respondent opened a new plant in its manufacturing division in the County of Peel and hired stationary engineers.

The collective agreement does not provide expressly for stationary engineers nor for skilled trades. Wage schedules are dealt with on the basis of "work grades" for which a "rate range" and a "progression schedule" are set out. No distinction is made in these work grades between skilled and unskilled trades.

When the stationary engineers were hired, the respondent, without reference to the intervener, placed them in a skilled trades work grade based on a collective agreement between the intervener and the respondent covering the employees of the respondent at London. While the respondent furnished lists of new employees to the intervener and afforded an opportunity to the intervener to interview new employees, the stationary engineers were not interviewed by representatives of the intervener between the date of their hiring and the date of this application. In fact, the intervener made its

first contact with the stationary engineers on or about January 29th, 1963, the application herein having been made on January 23rd. In January, 1963, the intervener elected its group representatives. Although the intervener placed the stationary engineers in group number five, consisting of one hundred employees, the stationary engineers did not take part in the election of the group's representative. Notice of the election was posted on the intervener's bulletin board but not in the power plant. The intervener met and bargained with the respondent on January 24th or 26th at which, for the first time, it presented demands covering the stationary engineers. This action again followed the making of the application herein. While a helper in the power plant was given a copy of the demands, there is no evidence that these demands were based on any discussions with the stationary engineers. The intervener is also processing a grievance on behalf of the stationary engineers which has reached the second step in the grievance procedure. This action was commenced on January 31st, and again followed the making of the instant application.

The intervener submits that, as a result of the Board's certificate and its agreement with the respondent, it has bargaining rights for all employees of the respondent in its manufacturing division in the County of Peel and that stationary engineers are employees of the respondent employed in that unit. It relies on the fact that the intervener represents the skilled and unskilled tradesmen, including stationary engineers, at other plants of the respondent and submits that an industrial unit is the appropriate unit in the type of industry concerned in this case. The intervener requests the Board to dismiss the application so that the intervener may have a reasonable time in which to represent the stationary engineers before the adequacy of its representation can be questioned.

In a number of recent decisions, the Board has enumerated the factors which it has considered in cases where it has exercised its discretion. In our view, this case is clearly distinguishable on its facts. In the circumstances, we are of opinion that this is a proper case in which to apply the mandatory provisions of section 6 (2) of The Labour Relations Act. Accordingly, the

Board finds that all stationary engineers and persons primarily engaged as their helpers employed in the power house of the respondent in its manufacturing division in the County of Peel, save and except the chief engineer, constitute a unit of employees of the respondent appropriate for collective bargaining."

REQUEST FOR RECONSIDERATION OF DECISION OF BOARD

5291-62-R: Canadian Brotherhood of Railway, Transport & General Workers (Applicant) v. Public Utilities Commission of the City of Kingston (Respondent) v. Local Union 1678, International Brotherhood of Electrical Workers, CLC (Intervener). (GRANTED FEBRUARY 1963).

On April 17th, 1963 the Board further endorsed the Record as follows:

"The intervener, Local Union 1678, International Brotherhood of Electrical Workers, CLC, has requested the Board in its letter dated April 8th, 1963 to reconsider the decision of the Board dated February 12th, 1963 in this matter.

The Board finds that the issues raised in the letter from the intervener dated April 8th, 1963 were argued at the hearing in this matter on February 7th, 1963 by the intervener and were considered by the Board prior to its decision of February 12th, 1963.

Since the intervener does not allege that there is new evidence which was not available to it at the hearing, and since no new issue has been raised that could not have been argued at the hearing in this matter by the intervener, the Board therefore does not consider it advisable to reconsider its decision dated February 12th, 1963."

5815-62-R: The National Union of Public Employees, C.L.C. (Local 855) (Lindsay and District) (Applicant) v. Board of Water, Light & Power Commissioners of the Village of Fenelon Falls (Respondent). (GRANTED APRIL 1963).

The Board endorsed the Record in part as follows:

"The applicant filed at the hearing in this matter a certified copy of a by-law enacted by the Corporation of the Village of Fenelon Falls being a by-law declaring that The Labour Relations Act does not apply to the Corporation of the Village of Fenelon Falls in its relations with its employees or any of them. Since the Corporation of

the Village of Fenelon Falls is not the respondent in this matter and is not the employer with which we are here concerned, this by-law is of no effect with reference to this matter."

PART 2

| | | |
|----|--|----|
| 1. | Applications and Complaints to the Ontario Labour Relations Board | S1 |
| 2. | Hearings of the Ontario Labour Relations Board | S1 |
| 3. | Applications and Complaints Disposed of by the Ontario Labour Relations Board by Major Types | S2 |
| 4. | Applications Disposed of by the Ontario Labour Relations Board by Types and by Disposition | S3 |
| 5. | Representation Votes in Certification Applications Disposed of by the Board | S5 |
| 6. | Representation Votes in Termination Applications Disposed of by the Board | S5 |

TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

| | | Number of applications filed April 1st month of fiscal year | | |
|------|---|--|--------------|--------------|
| | | <u>1963</u> | <u>63-64</u> | <u>62-63</u> |
| I | Certification | 65 | 65 | 74 |
| II | Declaration Terminating Bargaining Rights | 9 | 9 | 5 |
| III | Declaration of Successor Status | 1 | 1 | 1 |
| IV | Conciliation Services | 126 | 126 | 170 |
| V | Declaration that Strike Unlawful | - | - | 1 |
| VI | Declaration that Lockout Unlawful | - | - | 3 |
| VII | Consent to Prosecute | 4 | 4 | 13 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 14 | 14 | 9 |
| IX | Miscellaneous | <u>1</u> | <u>1</u> | <u>2</u> |
| | TOTAL | <u>220</u> | <u>220</u> | <u>278</u> |

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

| | | Number April 1st month of fiscal year | | |
|---|--|--|--------------|--------------|
| | | <u>1963</u> | <u>63-64</u> | <u>62-63</u> |
| Hearings & Continuation of Hearings by the Board | | 95 | 95 | 100 |

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

| | | Number of applications disposed of April 1st month of fiscal year | | |
|------|---|--|------------|------------|
| | | 1963 | 63-64 | 62-63 |
| | Certification | 73 | 73 | 81 |
| II | Declaration Terminating Bargaining Rights | 15 | 15 | 2 |
| III | Declaration of Successor Status | 1 | 1 | - |
| IV | Conciliation Services | 130 | 130 | 88 |
| V | Declaration that Strike Unlawful | - | - | 1 |
| VI | Declaration that Lockout Unlawful | - | - | - |
| VII | Consent to Prosecute | 3 | 3 | 1 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 11 | 11 | 11 |
| IX | Miscellaneous | - | - | - |
| | TOTAL | <u>233</u> | <u>233</u> | <u>184</u> |

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

| Disposition | Apr. 1st month fiscal yr. | | | *Employees | | |
|-------------|---------------------------|--------------|--------------|------------|--------------|--------------|
| | <u>'63</u> | <u>63-64</u> | <u>62-63</u> | <u>'63</u> | <u>63-64</u> | <u>62-63</u> |

I Certification

| | | | | | | |
|-----------|-----------|-----------|-----------|-------------|-------------|-------------|
| Granted | 58 | 58 | 57 | 1917 | 1917 | 1507 |
| Dismissed | 8 | 8 | 11 | 331 | 331 | 174 |
| Withdrawn | <u>6</u> | <u>6</u> | <u>13</u> | <u>92</u> | <u>92</u> | <u>177</u> |
| TOTAL | <u>72</u> | <u>72</u> | <u>81</u> | <u>2340</u> | <u>2340</u> | <u>1858</u> |

II Termination of Bargaining Rights

| | | | | | | |
|-----------|-----------|-----------|----------|------------|------------|------------|
| Granted | 12 | 12 | 2 | 285 | 285 | 201 |
| Dismissed | 3 | 3 | - | 55 | 55 | - |
| Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL | <u>15</u> | <u>15</u> | <u>2</u> | <u>340</u> | <u>340</u> | <u>201</u> |

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

- S4 - APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'ns disposed of
Apr. 1st month fiscal year

| '63 | 63-64 | 62-63 |
|-----|-------|-------|
|-----|-------|-------|

III Conciliation Services*

| | | | |
|-----------|------------|------------|-----------|
| Referred | 127 | 127 | 82 |
| Dismissed | 1 | 1 | - |
| Withdrawn | <u>2</u> | <u>2</u> | <u>6</u> |
| TOTAL | <u>130</u> | <u>130</u> | <u>88</u> |

IV Declaration that
Strike Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | - |
| Dismissed | - | - | - |
| Withdrawn | <u>-</u> | <u>-</u> | <u>1</u> |
| TOTAL | <u>-</u> | <u>-</u> | <u>1</u> |

V Declaration that
Lockout Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | - |
| Dismissed | - | - | - |
| Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL | <u>-</u> | <u>-</u> | <u>-</u> |

VI Consent to
Prosecute

| | | | |
|-----------|----------|----------|----------|
| Granted | 2 | 2 | - |
| Dismissed | - | - | - |
| Withdrawn | <u>1</u> | <u>1</u> | <u>1</u> |
| TOTAL | <u>3</u> | <u>3</u> | <u>1</u> |

*Includes applications for conciliation services re unions claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number of Votes | | |
|----------------------------------|-----------------|-----------------|---------------------|
| | April 1963 | 1st month 63-64 | of fiscal yr. 62-63 |
| <u>*Certification After Vote</u> | | | |
| pre-hearing vote | 2 | 2 | 5 |
| post-hearing vote | 9 | 9 | 2 |
| ballots not counted | - | - | - |
| <u>Dismissed After Vote</u> | | | |
| pre-hearing vote | - | - | - |
| post-hearing vote | 4 | 4 | 4 |
| ballots not counted | - | - | - |
| TOTAL | <u>15</u> | <u>15</u> | <u>11</u> |

*Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number | | |
|-------------------------------|------------|-----------------|---------------------|
| | April 1963 | 1st month 63-64 | of fiscal yr. 62-63 |
| *Respondent Union Successful | 1 | 1 | - |
| Respondent Union Unsuccessful | <u>6</u> | <u>6</u> | <u>1</u> |
| TOTAL | <u>7</u> | <u>7</u> | <u>1</u> |

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



2
MAY 1963

ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING MAY 1963

Bargaining Agents Certified During May
No Vote Conducted

5067-62-R: Sudbury General Workers Union, Local 101, Canadian Labour Congress (Applicant) v. Northern Foodmarts Limited (Respondent) v. The Sudbury and District General Workers' Union Local 902 of the International Union of Mine Mill and Smelter Workers (Intervener).

Unit: "all employees of the respondent at its retail stores in Sudbury, save and except store managers, assistant store managers, persons above the rank of assistant store manager, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (65 employees in the unit).

5282-62-R: Bakery & Confectionery Workers' International Union of America, Factory Bakers Union, Local 264 (Applicant) v. N. D. Applegate Ltd. (Respondent).

Unit: "all employees of the respondent in its stores at Alliston, save and except foremen, foreladies, those above the rank of foreman and forelady, office staff, persons regularly employed for less than 24 hours per week and students employed during the school vacation period." (13 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 104)

5298-63-R: International Woodworkers of America (Applicant) v. Faultless Casters Limited (Stratford) (Respondent).

Unit: "all employees of the respondent at Stratford, save and except foremen, persons above the rank of foreman and sales and office staff." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"For reasons to be given in writing by the majority with a dissent in writing by Board Member M.C. Hay, Q.C., having regard to the credibility of the witness who gave evidence concerning the origination and circulation of the document submitted to the Board as indicative of opposition by some of the employees of the respondent to the application of the applicant, the majority is not prepared to hold that the document weakens the evidence of membership submitted by the applicant so as to make it necessary to seek the confirmatory evidence of a representation vote in this case."

5488-62-R: RCA Victor Salaried Employees' Association
(Applicant) v. R.C.A. Victor Company, Ltd. (Respondent).

Unit: "all employees of the respondent at its distribution and service warehouse in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office and sales staff, students hired for the school vacation period."
(72 employees in the unit).

5489-62-R: RCA Victor Salaried Employees' Association
(Applicant) v. R.C.A. Victor Company, Ltd. (Respondent).

Unit: "all employees of the respondent at its distribution and service warehouse in Ottawa, save and except managers, persons above the rank of manager and office staff."
(9 employees in the unit).

5605-62-R: Retail, Wholesale and Department Store Union,
AFL:CIO:CLC (Applicant) v. K.M.A. Caterers Ltd. (Respondent).

Unit: "all driver salesmen in the employ of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman and students hired for the school vacation period." (31 employees in the unit).

(UNIT AGREED TO BY THE PARTIES).

5695-62-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. North Bay Pure Milk Dairy Limited (Respondent).

Unit: "all employees of the respondent at North Bay, save and except supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (15 employees in the unit).

The Board endorsed the Record in part as follows:

"In view of the circumstances which led to the origination and circulation of the document submitted to the Board as indicative of opposition by some of the employees of the respondent to the application of the applicant, we are not prepared to hold that the document weakens the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote in this case."

Board Member, M.C. Hay dissented and said:

"I dissent. I would have found that the document submitted as indicative of opposition by some of the employees of the respondent to the application of the applicant weakens the evidence submitted by the applicant so as to make it necessary to seek the confirmatory evidence of a representation vote in this case and I would have accordingly directed that a representation vote be taken of the employees of the respondent in the bargaining unit."

5699-62-R: Automatic Vending Employees Union (Applicant)
v. National Automatic Vending Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and persons regularly employed for not more than 24 hours per week."
(51 employees in the unit).

(UNIT AGREED TO BY THE PARTIES).

The Board endorsed the Record as follows:

"The evidence relating to the status of the applicant adduced before the Board is as follows. A meeting attended by thirty-three employees of the respondent was held in the shipping room of the respondent's plant on February 12th, 1963. The meeting was also attended by Charles Adler, a solicitor retained by a group of the employees. At that meeting, a constitution which had been prepared by Mr. Adler on the direction of the employees was unanimously adopted by the employees in attendance at the meeting. Permission was not secured from management to use the shipping room for the purposes of the meeting, and the meeting took place after regular working hours. No member of management was present and there was no evidence that management had notice of the meeting.

On March 19th, a second meeting of employees was held at the Conroy Hotel in Toronto which was attended by twenty-five employees. Mr. Adler was in attendance at that meeting. An amended constitution was unanimously adopted by the employees in attendance. A notice of the meeting was posted on the staff bulletin board. No permission was secured from management to post such a notice and according to the evidence, it was

not necessary to secure permission in order to post a notice. No member of management was present at the meeting and there was no evidence that management knew of the meeting.

The Board is satisfied that the manner in which the applicant came into being and the constitution adopted by its members on March 19th, 1963 is not in violation of section 10 of the Act.

The Board finds that the applicant is a trade union within the meaning of section 1 (1) (j) of The Labour Relations Act.

All the applications for membership in the applicant union were signed and the initiation fee paid prior to the adoption of the constitution on February 12th. At that meeting, the following resolution was unanimously passed by those in attendance:

"RESOLVED that all membership applications submitted to date be and the same are hereby accepted and all the members present at this meeting as well as D. Strachan, Florence Spencer, Marie Daly, Helen Greer, D. Gentle, W. King, Martha Mitchell and M. Strachan, are hereby considered as members in good standing of this Union."

The Board finds that the unanimous adoption of the above resolution is sufficient reaffirmation of membership in the applicant union by the thirty-three employees in attendance at the meeting to indicate their desire to belong to the union."

Board Member D.B. Archer dissented and said:

"I dissent.

There is very little difference between myself and the majority in our analysis of the evidence. A meeting took place on February 12th on the employers premises at which time 33 employees of the respondent and a solicitor retained by the employees were present. It is unbelievable to me that such a meeting could take place without the company's knowledge and consent.

At this meeting a constitution was adopted but prior to this all the membership cards had been signed and the receipts issued. An application for certification was made on February 6th but withdrawn on March 18th. The applicant stated he withdrew the application because he realized that cards signed before the constitution was adopted would not meet the Board's requirements. Since that time the only other action taken by the applicant was to post a notice on the company's bulletin board announcing a meeting on March 19th at the Conroy Hotel which was held. This application was then made.

First, let me say without hesitancy, I would dismiss the application under Section 48. I believe the meeting held on company property at which the union was formed and the posting of notice on company bulletin boards for subsequent meetings prior to certification which must have come to the company's attention is evidence of "other support" by the company, as described in Section 48, by the company. However, there is another fatal flaw in the applicant's case. On his own admission he withdrew the application because the cards were signed in a non-existent union. This withdrawal was for an application made on February 6th with a terminal date of March 1st. Yet the majority finds that a minute passed at the February 12th meeting was enough to rectify this error. Remember this minute was in existence at the time the original application was withdrawn.

I realize that many times the question of whether the membership cards were signed before the constitution was adopted is a matter of which comes first the chicken or the egg. I believe that where a person joins an organization before the constitution is adopted, setting out the aims, objectives, fees and fines, and general membership principles, that person to meet the Board's standards must have an individual signed reaffirmation of his desire to belong to the new organization that for the first time, he now has any real concept of what he is joining and what financial and other responsibilities it may entail. I do not believe this fundamental defect can be remedied by a mere passage of a resolution or minute passed at a meeting held on company property at which the affected person may or may not be present.

For these various reasons I would not have accepted the evidence of membership and origination of the association and would have dismissed the application."

5829-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419 Warehousemen and Miscellaneous Drivers (Applicant) v. Lenson Celery Hearts Ltd. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen persons above the rank of foreman, office and sales staff and persons regularly employed for not more than 24 hours per week."
(25 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 107)

5841-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Vendomatic Services Limited (Servettes) (Respondent).

Unit: "all employees of the respondent engaged at the sites thereof in servicing its automatic vending machines in York and Peel Counties, save and except supervisors, those above the rank of supervisor and persons bound by the subsisting collective agreement between the applicant and the respondent."
(10 employees in the unit).

5868-63-R: United Steelworkers of America (Applicant) v. Rio Algom Mines Limited - Pronto Division (Respondent).

Unit: "all employees of the respondent at its mining operation in the Townships of Long and Spragge, save and except shift bosses, foremen, assistant chief chemists, persons above the ranks of shift boss, foreman and assistant chief chemist, students hired for the school vacation period, office staff and security guards."
(127 employees in the unit).

5869-63-R: Local 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Carnation Company Limited (Respondent).

Unit: "all employees of the respondent at Alexandria, save and except foremen, persons above the rank of foreman, fieldmen, office staff and students hired for the school vacation period."
(71 employees in the unit).

5871-63-R: Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. Dawbarn (Canada) Limited (Respondent).

Unit: "all employees of the respondent at its plant on Prince Charles Road in Brant County, save and except foremen, persons above the rank of foreman and office staff."
(9 employees in the unit).

5872-63-R: International Hod Carriers Building and Common Labourers Union of America, Local 607 (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (17 employees in the unit).

(AFTER CAREFULLY CONSIDERING THE REPRESENTATIONS OF THE PARTIES)

5880-63-R: International Union of Operating Engineers, Local 793, (Applicant) v. Century Coal Company Limited (Respondent).

Unit: "all employees of the respondent at its dock in Humberstone Township engaged in the operation of cranes, shovels, bulldozers and similar equipment, conveyor operators and those primarily engaged in the repairing and maintaining of such equipment, save and except non-working foremen and persons above the rank of non-working foreman."
(4 employees in the unit).

5892-63-R: Teamsters Chauffeurs, Warehousemen and Helpers Local Union No. 880 affiliated with International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America (Applicant) v. Sarvice Limited (Respondent).

Unit: "all employees of the respondent in its Shell Products Division at Dover Township, save and except foremen, persons above the rank of foreman and office and sales staff."
(3 employees in the unit).

5918-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robertson - Yates Corporation Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a radius of twenty miles of the City of Barrie, including all the lands under the jurisdiction of the Department of National Defence, Camp Borden, save and except non-working foremen and persons above the rank of non-working foreman."
(4 employees in the unit).

The Board endorsed the Record in part as follows:

"It is clear on the evidence before the Board in this case that the pattern of collective bargaining has not changed from that set out in M. Sule Construction case, file number 4890-62-R and Ball Brothers Ltd., file number 5068-62-R, O.L.R.B. Monthly Report, January, 1963, C.C.H. Canadian Labour Law Reports, volume 1, ¶16,266.

The past practice of the Board in dealing with an application when the site of construction is in Camp Borden is to grant an area in terms of a twenty mile radius from Barrie including Camp Borden. Since this area covers a very substantial part of the County of Simcoe, and in the realization that the decision with respect to area by no means reflects the final thinking of the Board on this question, the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent within a radius of twenty miles of the City of Barrie, including all the lands under the jurisdiction of the Department of National Defence, Camp Borden, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

5921-63-R: National Union of Public Employees, Local Union No. 740 (Applicant) v. Deep River District High School Board (Respondent).

Unit: "all caretakers employed by the respondent."
(3 employees in the unit).

5929-63-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. George L. J. Trottier, carrying on business under the firm name and style of Delhi I.G.A. Food Market (Respondent).

Unit: "all meat department employees of the respondent at Delhi, save and except persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (3 employees in the unit).

5931-63-R: International Hod Carriers Building and Common Labourers Union, Local # 493 (Applicant) v. Abe Dick Masonry Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorous and in the unorganized townships of Parke and Awenge and in the townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

5933-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America (Applicant) v. The Parisian Laundry Company of Toronto Limited (Respondent).

Unit: "all delivery and pick-up drivers of the respondent in Metropolitan Toronto, save and except salesmen, complaint investigators, foremen, persons above the rank of foreman and office staff." (11 employees in the unit).

5934-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 141, Warehousemen and Miscellaneous Drivers (Applicant) v. Elliott-Marr and Company Limited (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office and sales staff." (28 employees in the unit).

5935-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Downtown Storage Co Ltd. (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (7 employees in the unit).

5954-63-R: United Steelworkers of America (Applicant) v. Moto-Mower of Canada, Division of Dura Corporation (Respondent).

Unit: "all employees of the respondent at Ingersoll, save and except foremen, persons above the rank of foreman, office and sales staff." (44 employees in the unit).

(HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE SEASONAL FLUCTUATIONS IN THE RESPONDENT'S OPERATIONS).

5956-63-R: Shopmen's Local Union #757 of the International Association of Bridge, Structural and Ornamental Iron Workers affiliated with the A.F.L.-C.I.O., C.L.C. (Applicant) v. Filton Steel (Canada) Limited (Respondent).

Unit: "all employees of the respondent at its shops at Oakville, save and except foremen, persons above the rank of foreman, office staff, guards and employees engaged in field erection and installation work." (76 employees in the unit).

5958-63-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, (Applicant) v. Lawrence Haulage (Respondent).

Unit: "all employees of the respondent employed at or working out of Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (4 employees in the unit).

5969-63-R: Local 280 of the Hotel & Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O.-C.L.C., (Applicant) v. Ye Olde Tavern Hotel Limited (Respondent).

Unit: "all tapmen, bartenders, beverage waiters, bar-boys and improvers in the employ of the respondent at Toronto, save and except managers, persons above the rank of manager and persons regularly employed for not more than 24 hours per week." (4 employees in the unit).

5976-63-R: Teamsters' Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, I.B. of T. (Applicant) v. Keele Transport Limited (Respondent).

Unit: "all employees of the respondent employed at or working out of its terminal at Woodbridge, save and except foremen, persons above the rank of foreman and office and sales staff." (7 employees in the unit).

6051-63-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union no. 124, Ottawa-Hull (Applicant) v. Abel Construction Co. Ltd. General Contractors (Respondent).

Unit: "all cement masons and cement masons' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant local seeks certification for an area covering five counties. While it would appear (1) that the jurisdiction of the local covers the five counties in question and (2) that the applicant has a number of collective agreements covering the same area, the Board did not grant the area

sought in the J. A. Jones Construction Company (Canada) Limited case, file number 5541-62-R. Furthermore in considering the appropriate geographic area in a particular case the Board has said that it would have regard not only to the pattern of collective bargaining established by a particular union but also patterns established by other unions in the area. It is clear that in the area sought by the applicant, the jurisdiction of locals of different unions varies widely, as does the pattern of collective bargaining. Finally it must be borne in mind that the areas granted by the Board in its recent decisions in construction industry cases, do not necessarily represent the final thinking of the Board on this matter. As we have pointed out in a number of cases our current policies must be regarded as only of an interim nature.

In these circumstances the Board therefore further finds that all cement masons and cement masons' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6052-63-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local 124, Ottawa - Hull (Applicant) v. Unicrete Construction Limited (Respondent).

Unit: "all cement masons and cement masons' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant local seeks certification for an area covering five counties. While it would appear (1) that the jurisdiction of the local covers the five counties in question and (2) that the applicant has a number of collective agreements covering the same area, the Board did not grant the area sought in the J. A. Jones Construction Company (Canada) Limited case, file number 5541-62-R. Furthermore in considering the appropriate geographic area in a particular case the Board has said that it would have regard not only to the pattern of collective bargaining established by a particular union but also patterns established by other unions in the area. It is clear that in the area sought by the applicant, the

jurisdiction of locals of different unions varies widely, as does the pattern of collective bargaining. Finally it must be borne in mind that the areas granted by the Board in its recent decisions in construction industry cases, do not necessarily represent the final thinking of the Board on this matter. As we have pointed out in a number of cases our current policies must be regarded as only of an interim nature.

In these circumstances the Board therefore further finds that all cement masons and cement masons' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6056-63-R: United Steelworkers of America (Applicant) v. St. Catharines Brass Works, Division of Johnson Matthey & Mallory Limited (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (27 employees in the unit).

6059-63-R: Building Service Employees' International Union, Local No. 204, AFL, CIO, CLC (Applicant) v. 460 Richmond Street West Limited (Respondent).

Unit: "all employees of the respondent in its maintenance Department at 460 Richmond Street West, Toronto." (3 employees in the unit).

6069-63-R: National Union of Public Service Employees (Applicant) v. The Calvert Municipal Telephone System (Respondent).

Unit: "all employees of the respondent at Calvert, save and except the head operator and persons above the rank of head operator." (14 employees in the unit).

6078-63-R: United Steelworkers of America (Applicant) v. Midland Screw & Gear Limited (Respondent).

Unit: "all employees of the respondent at Midland, save and except foremen, persons above the rank of foreman and office staff." (12 employees in the unit).

6083-63-R: International Woodworkers of America (Applicant)
v. Canada Spool & Bobbin Co. Limited (Respondent).

Unit: "all employees of the respondent at Walkerton, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than 24 hours per week." (103 employees in the unit).

6085-63-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local Union No. 230, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Lok Form Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (12 employees in the unit).

6094-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Dumos Forming Construction Co. Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a radius of thirty-five miles form the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

6097-63-R: United Brotherhood of Carpenters and Joiners of America Local 2466 (Applicant) v. M. Sullivan & Son Limited (Respondent).

Unit: "all carpenters and carpenter's apprentices in the employ of the respondent in the Townships of Burns, Richards, Jones, Sherwood, Hagarty, Radcliffe, Brudenell, Raglan and Lyndoch, all in the County of Renfrew, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

The Board endorsed the Record in part as follows:

"The Board notes that the applicant has not established a pattern of collective bargaining for the area it is seeking nor indeed for the County of Renfrew. After carefully considering the representations of the parties, the Board further finds that all carpenters and carpenter's apprentices in the employ of the respondent in the Townships of Burns, Richards, Jones, Sherwood, Hagarty, Radcliffe, Brudenell, Raglan and Lyndoch, all in the County of Renfrew, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6098-63-R: Local Union 633 Amalgamated Meat Cutters and Butcher Workmen of North America AFL/CIO (Applicant) v. Lapowich Meat Market (Respondent).

Unit: "all employees of the respondent at London, save and except owner-manager, cashier, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (3 employees in the unit).

6099-63-R: General Truck Drivers Local 879, International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Jones and Lockhart Ltd. (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen those above the rank of foreman, office and sales staff." (9 employees in the unit).

6107-63-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Lee Turzillo Contracting Company (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

The Board endorsed the Record in part as follows:

"Having regard to the number of cards filed by the applicant and to the list of employees filed by the respondent, it is clear that the applicant is entitled to represent the diver and diver's tender. In these circumstances the Board sees no reason for issuing two certificates.

For the purposes of clarity the Board declares that the diver and diver's tender are included in the bargaining unit."

6111-63-R: Bricklayers, Masons and Plasterers International Union of America, Local #13 (Applicant) v. Maurice Boucher (Respondent).

Unit: "all construction labourers in the employ of the respondent at or out of Cornwall, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

6119-63-R: International Hod Carriers Building and Common Labourers Union, Local # 247 (Applicant) v. T. A. Andre and Sons Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent at Brockville and in the township of Elizabethtown, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

The Board endorsed the Record in part as follows:

"The geographic area sought by the applicant in this case consists of three townships in the County of Leeds and one township in the County of Grenville. The job sites affected are in Brockville. In a recent application involving another employer, the applicant sought and was granted only a single township in the County of Grenville. Although this may not be a material factor, according to information filed with the Board by a representative of the International, the Township of Augusta in the County of Grenville (one of the townships sought) does not appear to fall within the jurisdictional area assigned to the applicant.

In the present application, nothing has been filed with the Board indicating that the area sought is an appropriate geographic area. The applicant has not filed collective agreements establishing any bargaining pattern, and it has not given any explanation or made any representations as to why it seeks this particular area. The Board might well have put the case on for hearing or requested the applicant to make further representations. However, this is a construction industry case and in the interest of avoiding delay the Board has decided to proceed with the matter on the material presently before it. The decision in this case will not of course, necessarily establish a precedent for future cases."

Certified Subsequent to Pre-Hearing Vote

5403-62-R: United Electrical, Radio & Machine Workers of America (UE) (Applicant) v. Northern Electric Company Limited (Respondent) v. Northern Electric Employees Association (Intervener).

Unit: "all employees of the respondent in its manufacturing division in the County of Peel, save and except section chiefs, persons above the rank of section chief, registered nurses, stationary engineers covered by the Board's certificate dated April 22nd, 1963, and office staff." (508 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE)

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| Number of names on revised eligibility list | | 516 |
| Number of ballots cast | 509 | |
| Number of spoiled ballots | 3 | |
| Number of segregated ballots (not counted) | 3 | |
| Number of ballots marked in favour of applicant | 319 | |
| Number of ballots marked in favour of intervener | 184 | |

5659-62-R: International Union of Operating Engineers, Local 700 (Applicant) v. Procor Limited (Respondent) v. District 50, United Mine Workers of America (Intervener).

Unit: "all stationary engineers employed by the respondent in the boiler room and compressor room of its plant in Oakville." (4 employees in the unit).

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| Number of names on revised eligibility list | | 4 |
| Number of ballots cast | 4 | |
| Number of ballots marked in favour of applicant | 4 | |
| Number of ballots marked in favour of intervener | 0 | |

5740-62-R: District 50, United Mine Workers of America (Applicant) v. Stephens-Adamson Manufacturing Co. of Canada Limited (Respondent) v. Sacco Collective Bargaining Union (Intervener).

Unit: "all employees of the respondent in Belleville, save and except foremen, persons above the rank of foreman, office engineering and sales staff, students employed during the school vacation period, persons employed in the Foundry Division and field erection crews." (131 employees in the unit).

(UNIT AGREED TO BY THE PARTIES)

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| Number of names on revised eligibility list | | 119 |
| Number of ballots cast | 116 | |
| Number of ballots spoiled | 2 | |
| Number of ballots marked in favour of applicant | 97 | |
| Number of ballots marked in favour of intervener | 17 | |

Certified Subsequent to Post-Hearing Vote

5317-62-R: Teamsters Chauffeurs Warehousemen and Helpers Local No. 91, affiliated with International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Hershey Chocolate of Canada, Limited (Respondent) v. The Canadian Union of Operating Engineers (Intervener #1) v. United Packinghouse, Food and Allied Workers, AFL-CIO-CLC (Intervener #2).

Unit #2: "all employees of the respondent in its plant at Smiths Falls, save and except foremen, persons above the rank of foreman, office, clerical and sales staff, laboratory staff, students employed for the school vacation period, and stationary engineers employed in the boiler room."
(69 employees in the unit).

On April 8, 1963 the Board endorsed the Record in part as follows:

"This application for certification came on for hearing before this Board on February 12, 1963. The applicant filed charges by letter dated February 8th which was received by the Board on February 11th. The applicant alleged improper conduct on the part of the intervener #2. On the request of the Board at the hearing, the applicant filed particulars of its charges. The applicant alleged that one of the employees of the respondent who signed a membership card for the trade union of intervener #2 did not pay the one dollar initiation fee on her own behalf and that the same employee had been coerced into signing the membership card.

The hearing of the application was adjourned sine die so that the Board in accordance with its usual practice could investigate the allegation of non-payment of the initiation fee. Subsequent to the Board's investigation, the charges of the applicant were heard by the Board on March 29th in Brockville.

The Board finds on the evidence before it that the intervener #2 did not exercise coercion in securing the signature of Mrs. Sarah M. Bell on the membership card for the trade union of intervener #2 which was signed by her.

The charge by the applicant of coercion on the part of the intervener #2 is accordingly dismissed.

On the evidence before it the Board finds that Mrs. Sarah M. Bell accepted one dollar from Ivan Van Dusen, an employee of the respondent, with which she paid the required initiation fee for membership in the trade union of the intervener #2. Although she repaid the one dollar to Ivan Van Dusen on February 9th, subsequent to being served with a summons to attend at a hearing before this Board on February 12th, the Board finds that Mrs. Bell did not intend to repay the one dollar at the time she accepted it from Ivan Van Dusen.

The Board accordingly is discounting her membership card in the trade union of the intervener #2.

Based on the evidence at the hearing, the Board is not able to make a finding that Charles Borski, a paid representative of the intervener #2, who was the collector of the one dollar initiation fee, had knowledge that Mrs. Bell had not paid the one dollar on her own behalf.

The charge of the applicant that the intervener #2 submitted a membership card for an employee who had not paid the required initiation fee on her own behalf is accordingly dismissed."

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| Number of names on revised eligibility list | | 93 |
| Number of ballots cast | 91 | |
| Number of spoiled ballots | 4 | |
| Number of ballots marked in favour of applicant | 9 | |
| Number of ballots marked in favour of intervener, United Packinghouse, Food and Allied Workers, AFL-CIO-CLC | 78 | |

5367-62-R: Boot and Shoe Worker's Union, affiliated with the American Federation of Labour and The Congress of Industrial Organizations (Applicant) v. Hewetson Shoes Limited (Respondent) v. Hewetson's Employees Shop Union (Intervener). (Intervener Dismissed).

Unit: "all employees of the respondent at Brampton, save and except foremen, foreladies, persons above the ranks of foreman or forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period."
(190 employees in the unit).

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| Number of names on revised eligibility list | | 184 |
| Number of ballots cast | 183 | |
| Number of ballots spoiled | 1 | |
| Number of ballots marked in favour of applicant | 108 | |
| Number of ballots marked in favour of intervener | 74 | |

5662-62-R: The Canadian Union of Operating Engineers (Applicant) v. The Canadian Coleman Company Limited (Respondent) v. International Union of Operating Engineers, Loc. 796 (Intervener).

Unit: "all stationary engineers employed by the respondent in its power plant at Etobicoke Township, save and except chief engineer." (4 employees in the unit).

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| Number of names on eligibility list | | 4 |
| Number of ballots cast | 4 | |
| Number of ballots marked in favour of applicant | 3 | |
| Number of ballots marked as opposed to applicant | 1 | |

5683-62-R: International Hod Carriers', Building and Common Labourers' Union of America, Local 527 (A.F.L.-C.I.O.) (C.L.C.) (Applicant) v. Thomas Fuller Construction Company (1958) Limited (Respondent) v. Canadian Construction Workers' Union, Division No. 1 (N.C.C.L.) (Intervener).

Unit: "all construction labourers in the employ of the respondent at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 108)

On May 29, 1963 the Board endorsed the Record as follows:

"After carefully considering the representations of the parties, we are unable to agree with the intervener that the Board's direction in paragraph 9 of its decision dated April 29th, 1963, prejudiced the intervener in the representation vote held on May 13, 1963. The intervener appears to overlook the fact that in order to maintain its practice of ordering representation votes in cases where one union seeks to displace another, the Board placed a very high standard or degree of proof on the applicant in connection with the charges it made and the relief it sought.

Further, it was the conduct of one of the intervener's representatives which in large measure was responsible for the direction in question. In addition, no complaint was made to the Board prior to the taking of the vote. Finally on the question of effect, there is in our opinion no evidence to support the contention that the direction would influence the voters in any improper way as suggested by the intervener. No eligible voter was called to give evidence. In addition, on the same day at approximately the same time another vote was held involving the same two unions and an employer, Metcalfe Realty Company Limited, a company closely associated with the present respondent. In the Metcalfe Realty Company Limited vote the same direction was given because the two cases were heard together and by agreement of the parties, the same evidence was applied to both cases. In the Metcalfe Realty Company Limited case the intervener won the vote. Finally, as was pointed out to the intervener at the hearing, in the Canada Dry Bottling Company (Windsor) Limited Case, O.L.A.B. Monthly Report, September, 1960, p. 216, the union lost the vote although the decision of the Board contained a similar direction against the respondent employer.

The objections of the intervener are accordingly, overruled."

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| Number of names on eligibility list | | 9 |
| Number of ballots cast | 9 | |
| Number of ballots marked in favour of applicant | 5 | |
| Number of ballots marked in favour of intervener | 4 | |

5791-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Silverwood Dairies Limited (Respondent) v. Canadian Union of Operating Engineers, Local 102 (Intervener).

Unit: "all employees of the respondent at Windsor, save and except senior supervisors, foremen, sales supervisors, persons above the ranks of senior supervisor, foreman and sales supervisor, persons covered by the collective agreement between the Canadian Union of Operating Engineers, Local 102, and the

respondent, persons employed in the milk bar, office staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (79 employees in the unit).

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| Number of names on revised eligibility list | | 80 |
| Number of ballots cast | 80 | |
| Number of ballots marked in favour of applicant | 58 | |
| Number of ballots marked in favour of Independent Dairy Workers Union | 22 | |

5816-63-R: Sudbury General Workers Union, Local 101, Canadian Labour Congress (Applicant) v. National Grocers Company Limited (Respondent) v. The Sudbury and District General Workers' Union, Local 902 of the International Union of Mine Mill & Smelter Workers (Intervener).
(INTERVENER DISMISSED).

Unit: "all employees of the respondent at its Sudbury branch, save and except foremen, persons above the rank of foreman, office staff and sales staff." (27 employees in the unit).

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| Number of names on eligibility list | | 27 |
| Number of ballots cast | 27 | |
| Number of ballots marked in favour of applicant | 16 | |
| Number of ballots marked in favour of intervener | 11 | |

5842-63-R: International Alliance of Bill Posters, Billers and Distributors of the United States and Canada, Local 157 (Applicant) v. The C.E. Marley Limited (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than 24 hours per week." (32 employees in the unit).

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| Number of names on revised eligibility list | | 29 |
| Number of ballots cast | 26 | |
| Number of ballots marked in favour of applicant | 22 | |
| Number of ballots marked as opposed to applicant | 4 | |

Applications for Certification Dismissed No Vote Conducted

5870-63-R: Retail Clerks International Association
(Applicant) v. Sentry Department Stores Limited (Respondent).
(47 employees).

The Board endorsed the Record as follows:

"The applicant having failed to file a declaration concerning membership documents (Form 9) in accordance with the Board's Rules of Procedure this application is therefore dismissed."

5881-63-R: International Molders and Allied Workers Union
AFL.CIO.CLC. (Applicant) v. Reynolds Aluminum Company of
Canada Limited (Respondent).

The Board endorsed the Record as follows:

"The Board finds that there are no employees in the bargaining unit proposed by the applicant in this case and the application is therefore dismissed."

5938-63-R: United Brotherhood of Carpenters and Joiners of
America (Applicant) v. Robertson-Yates Corporation Limited
(Respondent) v. Greater Niagara Ontario Carpenters District
Council (Intervener). (9 employees).

The Board endorsed the Record as follows:

"It is clear that Local Union 18, United Brotherhood of Carpenters and Joiners of America has bargaining rights for the respondents carpenters and carpenters' apprentices for most of the area sought by the applicant in the present case. That area is defined in the collective agreement between Local Union 18 and the General Contractors' Section of the Hamilton Construction Association and Builders' Exchange, made February 12, 1960. It is also clear that the job site affected by the present application does not fall within the area defined in the said collective agreement. Even if the agreement permits a unilateral change in area by the action of Local Union 18 and other locals of the applicant union (and we make no finding as to whether the agreement does or does not permit Local Union 18 to take such action) there is no present re-defining of the area by Local Union 18 and the Greater Niagara Ontario District Council. Local Union 18 thus has no bargaining rights over the employees

affected by the present application.

We are satisfied that when J. Bailey signed the agreement between the respondent and the Greater Niagara Ontario Carpenters District Council, there came into existence at that time a collective agreement between the parties within the meaning of The Labour Relations Act. There is no evidence that Mr. Hague did not have the power to bind the Council. As was stated by Mr. Bailey he had dealt with Mr. Hague for years. Furthermore it is quite clear that the Council confirms this because at the hearing their representative took the position that there was a collective agreement. In our view there is no legal requirement that parties entering into a collective agreement must make this fact known to the general public. The fact that Mr. Hanshar subsequently affixed his signature to the agreement does not in our view lead to the inference that two signatures were required to bind the Council. The respondent was entitled, in the circumstances, to assume that Mr. Hague was acting within the scope of his authority (and see section 74(2) of The Labour Relations Act) and indeed, in our experience, signing a collective agreement is ordinarily within the scope of authority of a business agent in the building trades.

The employees affected by the present application are working on a job site in Hagersville, in the County of Haldimand, one of the counties covered by the agreement between the respondent and the Greater Niagara Ontario Carpenters District Council. In these circumstances and having regard to our other findings in this matter, the application is premature.

The application is accordingly dismissed."

Certification Dismissed Subsequent to Pre-Hearing Vote

5177-62-R: District 50, United Mine Workers of America.
(Applicant) v. Caldwell Linen Mills Limited (Respondent).

Voting Constituency: "all office employees of the respondent at Iroquois, save and except supervisors, persons above the rank of supervisor, nurse, sales staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period."

(38 employees in the constituency).

(AGREED TO BY THE PARTIES).

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| Number of names on revised eligibility list | | 35 |
| Number of ballots cast | 35 | |
| Number of ballots segregated (not counted) | 1 | |
| Number of ballots marked in favour of applicant | 14 | |
| Number of ballots marked as opposed to applicant | 20 | |

5866-63-R: International Hod Carriers', Building and Common Labourers Union of America, Local 527 (A. F. L. - C. I. O.) (C. L. C.) (Applicant) v. Sirotek Construction Limited (Respondent) v. Canadian Construction Workers' Union, Division No. 1 (N.C.C.L.) (Intervener).

Voting Constituency: "all construction labourers in the employ of the respondent, save and except foremen and persons above the rank of foreman." (14 employees in the constituency).

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| Number of names on revised eligibility list | | 14 |
| Number of ballots cast | 14 | |
| Number of ballots marked in favour of applicant | 4 | |
| Number of ballots marked in favour of intervener | 10 | |

5867-63-R: District 50, United Mine Workers of America (Applicant) v. Canadian Industries Limited (Respondent) v. International Union of Operating Engineers Local 796 (Intervener) v. Oil, Chemical and Atomic Workers International Union and its Local 9-684 (Intervener).

Voting Constituency: "all employees of the respondent at its Nobel Works at Nobel, save and except foremen, persons above the rank of foreman, employees in the light, heat and power department and in the power house, engineering staff, laboratory technicians, office and clerical staff and plant guards." (94 employees in the constituency).

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| Number of names on revised eligibility list | | 83 |
| Number of ballots cast | 81 | |
| Number of ballots marked in favour of applicant | 40 | |
| Number of ballots marked as opposed to applicant | 41 | |

Certification Dismissed Subsequent to Post-Hearing Vote

3246-61-R: The Sudbury General Workers Union, Local 101, Canadian Labour Congress (Applicant) v. Cima Limited, carrying on business as the sole proprietor of Bannon Brothers (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except the assistant store manager, persons above the rank of assistant store manager and office staff."
(20 employees in the unit).

(UNIT AGREED TO BY THE PARTIES)
(SEE INDEXED ENDORSEMENT PAGE 100)

The representation vote was held on May 17, 1963. The voting was as follows:

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| Number of names on revised eligibility list | 18 |
| Number of ballots cast | 17 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked as opposed to applicant | 14 |

4374-62-R: Welders Public Garage Employees Motor Mechanics and Allied Workers Local Union 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Elgin Motors Co. Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto save and except foremen, those above the rank of foreman, main office staff, new and used car salesmen, parts roadmen, service advisors, and employees of the respondent covered by the Board's certificate dated April 16, 1962, as clarified by the Board's decision dated November 1, 1962."
(17 employees in the unit).

On April 11, 1963 the Board endorsed the Record in part as follows:

"In this case the Board has had the benefit of (1) a decision of another panel of the Board clarifying a previous decision of that panel on another application affecting the applicant and the respondent; (2) a report of an examiner; (3) a view of the premises of the respondent (in the presence of all parties); and (4) the representations of the parties on all issues.

After carefully considering all these matters the Board finds further that all employees of the respondent in Metropolitan Toronto save and except foremen, those above the rank of foreman, main office staff, new and used car salesmen, parts roadmen, service advisors, and employees of the respondent covered by the Board's certificate dated April 16, 1962, as clarified by the Board's decision dated November 1, 1962, constitute a unit of employees of the respondent appropriate for collective bargaining.

For purposes of clarity, the Board declares that having regard to all the evidence before it, the Board finds that the service advisors are not appropriate for inclusion in the present bargaining unit. Having reached this conclusion it therefore becomes unnecessary to determine whether the service advisors exercise managerial functions within the meaning of section 1 (3) (b) of The Labour Relations Act."

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| Number of names on revised eligibility list | | 14 |
| Number of ballots cast | 14 | |
| Number of ballots marked in favour of applicant | 1 | |
| Number of ballots marked as opposed to applicant | 13 | |

5228-62-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Dashwood Planing Mills Limited (Respondent).

Unit: "all employees of the respondent at Dashwood, save and except foremen, persons above the rank of foreman, office and sales staff." (39 employees in the unit).

(UNIT AGREED TO BY THE PARTIES).

The Board endorsed the Record in part as follows:

"The applicant filed a statement of objection to the vote held in this matter on April 2nd, 1963, alleging that the respondent violated section 48 of The Labour Relations Act.

Having regard to the evidence of Gerald Tyler and David Retz, employees of the respondent, and the views expressed in a company publication

dated March 22nd, we are satisfied that the respondent did not exercise undue influence over its employees in violation of The Labour Relations Act."

Board Member D. B. Archer said:

" I would have ordered a new vote. I believe the intervention of management, keeping in mind the peculiar relationship between management and labour, made a free expression of opinion impossible."

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| Number of names on revised eligibility list | | 42 |
| Number of ballots cast | 42 | |
| Number of ballots spoiled | 1 | |
| Number of ballots marked in favour of applicant | 17 | |
| Number of ballots marked as opposed to applicant | 24 | |

5526-62-R: United Packinghouse, Food and Allied Workers, .
AFL-CIO-CLC (Applicant) v. Canadian Dressed Meats Ltd.
(Respondent).

Unit: "all employees of the respondent at Toronto, save and except supervisors, persons above the rank of supervisor and office and sales staff." (63 employees in the unit).

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| Number of names on revised eligibility list | | 60 |
| Number of ballots cast | 60 | |
| Number of ballots marked in favour of applicant | 27 | |
| Number of ballots marked as opposed to applicant | 33 | |

5612-62-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers (Applicant) v. Wilburcolt Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (22 employees in the unit).

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| Number of names on revised eligibility list | | 21 |
| Number of ballots cast | 21 | |
| Number of ballots marked in favour of applicant | 5 | |
| Number of ballots marked as opposed to applicant | 16 | |

5674-62-R: International Hod Carriers' Building and Common Labourers' Union of America, Local 527 (A.F.L.-C.I.O.) (C.L.C.) (Applicant) v. Metcalfe Realty Company Limited (Respondent) v. Canadian Construction Workers' Union, Division No. 1 (N.C.C.L.) (Intervener).

Unit: "all construction labourers in the employ of the respondent save and except foremen and those above the rank of foreman." (15 employees in the unit).
(For the reasons given in the Thomas Fuller Construction Company (1958) Limited case, file no. 5683-62-R).

On April 29, 1963 the Board endorsed the Record in part as follows:

"In view of the somewhat suspicious circumstances which have emerged in the present case, and so that this matter may be made clear to all concerned prior to the taking of the vote, the Board wishes to make it clear that should it become necessary, it will subject to the most searching scrutiny everything that the Canadian Construction Workers' Union, Division No. 1 (N.C.C.L.) and the Thomas Fuller Construction Company (1958) Limited or any person associated with them may do, between the date of this decision and the date the vote is taken, which may even in the slightest degree have the effect of influencing the employees in the free expression of their desires. Anything untoward will be dealt with as the circumstances require. This paragraph is to be incorporated in red on Form 48, Notice of Taking of Vote."

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| Number of names on revised eligibility list | 4 |
| Number of ballots cast | 4 |
| Number of ballots marked in favour of applicant | 1 |
| Number of ballots marked in favour of intervener | 3 |

5689-62-R: District 50, United Mine Workers of America (Applicant) v. Canadian Oxygen Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except foremen, persons above the rank of foreman and office and sales staff." (16 employees in the unit).

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| Number of names on eligibility list | 16 |
| Number of ballots cast | 16 |

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| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked as opposed to applicant | 13 |

BALLOTS NOT COUNTED

5361-62-R: International Union of Operating Engineers,
Local 700 (Applicant) v. Watsons Manufacturing Company
Limited (Respondent).

Unit: "all stationary engineers employed in the boiler room
of the respondent at Brantford, save and except the chief
engineer." (4 employees in the unit).

The Board endorsed the Record as follows:

"Having regard to the representation contained
in the letter from the applicant dated May 13th,
1963, this application is dismissed at the request
of the applicant.

If the applicant makes a further application
for certification covering the employees affected
by this application within a period of six months
from the date hereof, the Board will at that time
entertain any representations the parties may wish
to make with respect to the timeliness of that
application."

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| Number of names on revised eligibility list | 3 |
| Number of ballots cast | 2 |

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY 1963

5817-63-R: United Brotherhood of Carpenters & Joiners of
America Local Union #802 (Applicant) v. Reynolds Picture
Framing (Respondent). (2 employees).

5857-63-R: Canadian Transportation Workers' Union, No. 200,
National Council of Canadian Labour (Applicant) v. Index
Distributors Ltd. (Metropolitan Toronto) (Respondent).
(3 employees).

5891-63-R: Milk and Bread Drivers, Dairy Employees, Caterers
and Allied Employees Local Union No. 647, affiliated with the
International Brotherhood of Teamsters, Chauffeurs, Ware-
housemen and Helpers of America (Applicant) v. Purity Co-Op
Dairy (Respondent). (6 employees).

The Board endorsed the Record as follows:

"This application is withdrawn on the request of the applicant with the consent of the respondent by leave of the Board."

5926-63-R: International Union, United Automobile Aerospace, Agricultural Implement Workers of America (UAW) (Applicant) v. Middlesex Motors Co. Ltd. (Respondent). (37 employees).

6074-63-R: International Hod Carriers Building and Common Labourers Union of America, Local #247 (Applicant) v. Foundation Company of Canada (Respondent). (17 employees).

6086-63-R: Textile Workers Union of America AFL-CIO-CLC (Applicant) v. Coroplastics Canada Limited (Respondent). (7 employees).

6118-63-R: International Hod Carriers Building and Common Labourers Union, Local # 247 (Applicant) v. Abe Dick Masonry Ltd. (Respondent). (6 employees).

6154-63-R: National Union of Public Service Employees (Applicant) v. Board of Governors of Ryerson Polytechnical Institute (Respondent). (34 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING MAY 1963

4093-62-R: Arthur Willan (Applicant) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880 (Respondent). (GRANTED) (1 employee).

(Re: Daniel's Coal Limited,
Chatham, Ontario).

The Board endorsed the Record as follows:

The applicant having made an application to terminate the bargaining rights of the respondent and the respondent having advised the Board by letter dated May 14, 1963, and by telegram dated May 28, 1963, that it "no longer claim to represent employees of Byng Laundry and Dry Cleaners", the Board finds that the respondent has abandoned its bargaining rights and no longer represents the employees of Byng Laundry and Dry Cleaners for whom it has heretofore been the bargaining agent."

4417-62-R: Leo Paul Belanger (Applicant) v. International Pulp and Sulphite Workers Union (Respondent). (GRANTED). (17 employees).

(Re: Byng Laundry and Dry Cleaners,
Kapuskasing, Ontario).

The Board endorsed the Record as follows:

"The applicant having made an application to terminate the bargaining rights of the respondent and the respondent having advised the Board by letter dated May 14, 1963, and by telegram dated May 28, 1963, that it "no longer claim to represent employees of Byng Laundry and Dry Cleaners", the Board finds that the respondent has abandoned its bargaining rights and no longer represents the employees of Byng Laundry and Dry Cleaners for whom it has heretofore been the bargaining agent."

5186-62-R: National Refractories Ltd. (Applicant) v. United Electrical, Radio and Machine Workers of America (U.E.) (Respondent). (DISMISSED). (14 employees).

(Re: National Refractories Ltd.,
Port Robinson, Ontario).

(SEE INDEXED ENDORSEMENT PAGE 110)

5283-62-R: Samuel C. Taylor (Applicant) v. General Truck Drivers Union, Local 938, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (GRANTED). (12 employees).

(Re: G. & C. Cartage,
Toronto, Ontario).

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| Number of names on revised eligibility list | 12 |
| Number of ballots cast | 12 |
| Number of ballots marked in favour of respondent | 4 |
| Number of ballots marked as opposed to respondent | 8 |

5581-62-R: Ruth Woboditsch (Applicant) v. Dental Technicians Union, Toronto Local 43 (Respondent) v. Nobilium Processors Limited (Intervener). (GRANTED). (14 employees).

(Re: Nobilium Processors Limited,
Toronto, Ontario).

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| Number of names on revised eligibility list | | 16 |
| Number of ballots cast | 16 | |
| Number of ballots marked in favour of respondent | 2 | |
| Number of ballots marked as opposed to respondent | 14 | |

5804-63-R: John E. Caswell (Applicant) v. Retail Wholesale & Department Store Union Local 414 of the Retail Wholesale & Department Store Union AF of L-CIO-CLC (Applicant) v. National Grocers Company Limited (Intervener). (GRANTED). (60 employees).

(Re: National Grocers Company Limited,
Mimico, Ontario).

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| Number of names on revised eligibility list | | 54 |
| Number of ballots cast | 54 | |
| Number of ballots marked in favour of respondent | 8 | |
| Number of ballots marked as opposed to respondent | 46 | |

5810-63-R: Leslie Jantzi and David Moore on their own behalf and on the behalf of the employees of Saunders-Cook Ltd. (Applicant) v. Welders, Public Garage Employees, Motor Mechanics and Allied Workers Local Union 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. Saunders-Cook Limited (Intervener). (GRANTED). (35 employees).

(Re: Saunders-Cook Limited,
Metropolitan Toronto).

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| Number of names on revised eligibility list | | 32 |
| Number of ballots cast | 32 | |
| Number of ballots marked in favour of respondent | 14 | |
| Number of ballots marked as opposed to respondent | 18 | |

5884-63-R: Welwyns Canada Ltd. (Applicant) v. International Brotherhood of Electrical Workers (Respondent). (DISMISSED). (108 employees).

(Re: Welwyns Canada Ltd.,
London, Ontario).

5988-63-R: R. G. Thomson and Ivan Sivyver (Applicants) v. Steelworkers of America (Respondent). (GRANTED). (16 employees).

(Re: Aylmer and Malahide Telephone Company,
Aylmer and Straffordville, Ontario).

6060-63-R: Central House Ltd. (Applicant) v. The Hotel, Restaurant Employees Bartenders Int. Union Local 412, Sault Ste. Marie (Respondent). (GRANTED). (5 employees).

(Re: Central House Ltd.,
Sault Ste. Marie, Ontario).

The Board endorsed the Record as follows:

"The applicant having made an application to terminate the bargaining rights of the respondent and the respondent having advised the Board by its telegram dated May 18th, 1963 that it 'does not at this time continue or claim to represent the employees concerned', the Board therefore finds that the respondent has abandoned its bargaining rights and no longer represents the employees of Central House Limited at Sault Ste. Marie for whom it has heretofore been the bargaining agent."

6132-63-R: Employees of Harry Hayley & Son, Limited (Applicants) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of North America, Local 230 (Respondent). (DISMISSED). (55 employees).

(Re: Harry Hayley & Son Limited,
Ottawa & Eastview plants).

The Board endorsed the Record as follows:

"Having regard to the evidence as to the circumstances surrounding the origination of the documents submitted in support of the application and the manner in which the signatures appearing on the documents were obtained, the Board is not satisfied that a majority of the employees in the bargaining unit have voluntarily signified their desire to terminate the right of the respondent to bargain on their behalf.

The application accordingly is dismissed."

6153-63-R: E.O. Mutterback, in behalf of a group of employees (Applicant) v. District 50, United Mine Workers of America (Respondent). (29 employees).

(Re: Coca-Cola Limited,
Windsor, Ontario).

The Board endorsed the Record as follows:

"This is an application for a declaration terminating the bargaining rights of the respondent pursuant to the provisions of section 43 of the Labour Relations Act.

The respondent was certified as bargaining agent for certain employees of Coca-Cola Limited at Windsor on the 14th day of September 1962. Conciliation services were made available to the respondent and Coca-Cola Limited on the 28th day of January, 1963, a conciliation Board was appointed on the 11th day of March, 1963 and the report of the Conciliation Board was released by the Minister and Coca Cola Limited on the 29th day of April, 1963.

Since one year has not elapsed since the date of certification of the respondent and since 30 days have not elapsed since the report of the Conciliation Board was released by the Minister, the Board is satisfied that pursuant to the provisions of section 46(1) of The Labour Relations Act, this application is untimely.

In view of these circumstances and in accordance with the provisions of section 45 of the Board's Rules of Procedure, the Board is of opinion that the applicant has failed to make a prima facie case for the remedy requested and the application is therefore dismissed."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF
DURING MAY 1963

5974-63-U: 20th Century Mobile Homes Ltd. (Applicant) v. the United Brotherhood of Carpenters & Joiners of America A.F.L.-C.I.O.-C.L.C., Local 3054 (Respondent). (WITHDRAWN).

5992-63-U: 20th Century Mobile Homes Ltd. (Applicant) v. Ivan Abusow et al (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING

MAY 1963

5182-62-U: King Shopping Plaza (London) Limited (Applicant)
v. Clinton T. Andison (Respondent). (DISMISSED).

- and -

5182 62-U: King Shopping Plaza (London) Limited (Applicant)
v. Thomas G. Harkness (Respondent). (DISMISSED).

(SEE SPECIAL ENDORSEMENT PAGE 115)

5185-62-U: National Refractories Limited (Applicant) v.
United Electrical, Radio and Machine Workers of America (UE)
(Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The applicant has applied for consent to institute a prosecution of the respondent trade union for the following offence alleged to have been committed: that the said respondent through its officers, officials and agents, called, authorized, counselled, supported, let and encouraged an unlawful strike at the applicant's plant contrary to section 55 of The Labour Relations Act.

The respondent is a trade union and, as the Board stated in the J. A. Service Limited Cases, Ontario Labour Relations Board Monthly Report, July 1962, p. 139, section 55 makes it an offence for a trade union to call or authorize an unlawful strike but there is nothing in that section which makes it an offence for a trade union to "counsel, procure, support or encourage an unlawful strike". Accordingly the application is dismissed in so far as it alleges that the respondent trade union "counselled supported, led and encouraged an unlawful strike".

With respect to the allegation that the respondent "called" an unlawful strike, we are of opinion, on the basis of all the evidence before the Board, that the applicant has failed to establish a prima facie case for the relief requested. Accordingly the application is also dismissed in so far as it alleges that the respondent "called" an unlawful strike.

In so far as the applicant alleges that the respondent "authorized" an unlawful strike, the Board consents to the institution of a prosecution of the respondent for the following offence alleged to have been committed:-

that the respondent, on or about the 6th day of December, 1962, did authorize an unlawful strike of employees of the applicant contrary to section 55 of The Labour Relations Act.

The appropriate documents will issue."

5653-62-U: United Glass & Ceramic Workers of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Dominion Glass Company Limited (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against Dominion Glass Company Limited for the following offences alleged to have been committed:

That contrary to sections 12 and 69 of The Labour Relations Act Dominion Glass Company Limited did between in or about the 13th day of March, 1962, and the 18th day of March, 1963, fail to bargain in good faith and make every reasonable effort to make a collective agreement with The United Glass & Ceramic Workers of North America, A.F.L.-C.I.O.-C.L.C."

Board Member R.W. Teagle dissented and said:

"I dissent. The Board's jurisdiction in this matter must be found within the provisions of section 12 of the Act. That is, that the company failed to bargain in good faith and make every reasonable effort to make a collective agreement. The evidence adduced does not in my opinion disclose the ingredients of an offence under section 12 of the Act, and I would have dismissed the application."

5853-63-U: Four Seasons Apartments (London) Limited (Applicant) v. John F. Yake (Respondent). (WITHDRAWN).

5854-63-U: Four Seasons Apartments (London) Limited (Applicant) v. John Wilson (Respondent). (WITHDRAWN).

5855-63-U: Four Seasons Apartments (London) Limited (Applicant)
v. James Sandford (Respondent). (WITHDRAWN).

5856-63-U: Four Seasons Apartments (London) Limited (Applicant)
v. Ronald Sims (Respondent). (WITHDRAWN).

5993-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Albion Construction (Respondent). (WITHDRAWN).

5995-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. D. Antonangelli & Son (Respondent) (WITHDRAWN).

5997-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Paul Ricci & Son (Respondent). (WITHDRAWN).

5999-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Landu Construction (Respondent) (WITHDRAWN).

6001-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Grand Bend Construction (Respondent). (WITHDRAWN).

6002-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. F. & G. Construction (Respondent). (WITHDRAWN).

6003-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Donmar Contracting (Respondent). (WITHDRAWN).

6006-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Di Monte & Son (Respondent). (WITHDRAWN).

6007-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Di Monte Brothers (Respondent). (WITHDRAWN).

6008-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Steve Dimambro (Respondent). (WITHDRAWN).

6009-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. E. Di Marco (Respondent). (WITHDRAWN).

6011-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant)
v. Di Lorenzo Construction (Respondent). (WITHDRAWN).

- 6014-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Clemente & Bellmore (Respondent). (WITHDRAWN).
- 6016-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Valente Brothers (Respondent). (WITHDRAWN).
- 6017-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Dino Trinetti Construction (Respondent). (WITHDRAWN).
- 6018-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Torquineo Concrete (Respondent). (WITHDRAWN).
- 6020-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Ruffolo Construction (Respondent). (WITHDRAWN).
- 6021-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Romanelli Construction (Respondent). (WITHDRAWN).
- 6026-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. C & C Drain & Concrete (Respondent). (WITHDRAWN).
- 6027-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. G. A. Catenacci (Respondent). (WITHDRAWN).
- 6028-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Clanton Construction (Respondent). (WITHDRAWN).
- 6029-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Columbia Drain & Concrete (Respondent). (WITHDRAWN).
- 6030-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. D'Amario Brothers (Respondent). (WITHDRAWN).
- 6033-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Glen-Park Construction (Respondent). (WITHDRAWN).
- 6036-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Lanno & Son (Respondent). (WITHDRAWN).
- 6000-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Hillmount Contractors (Respondent) (WITHDRAWN).

6037-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. A. & V. Mantenuto (Respondent). (WITHDRAWN).

6038-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. M. & A. Construction (Respondent). (WITHDRAWN).

6039-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. M. & F. Marcucci (Respondent). (WITHDRAWN).

6040-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Metro Forming (Respondent). (WITHDRAWN).

6043-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Ricci & Natale (Respondent). (WITHDRAWN).

6046-63-U: Operative Plasterers' & Cement Masons International Association of the United States and Canada (Applicant) v. J. Sturino Co. (Respondent). (WITHDRAWN).

6048-63-U: Operative Plasterers' & Cement Masons International Association of the United States and Canada (Applicant) v. Warwick Construction (Respondent). (WITHDRAWN).

6077-63-U: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Warehousemen and Miscellaneous Drivers Local Union 419 (Applicant) v. Parisian Laundry Company of Toronto Limited and D. Morton (Respondent). (WITHDRAWN).

6160-63-U: United Steelworkers of America (Applicant) v. Stoklosar Marble Quarries Ltd. (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING MAY 1963

5594-62-U: Local 264, Bakery and Confectionery Workers' International Union of America (Complainant) v. The Great Atlantic & Pacific Tea Co. Ltd. National Produce Division (Respondent).

The Board endorsed the Record as follows:

"On the basis of all the evidence and the representations of the parties, the Board finds that the complainant has failed to satisfy the Board that the respondent refused to continue to employ Victor Daniels contrary to the provisions of section 50 (a) of The Labour Relations Act."

5595-62-U: Local 264, Bakery and Confectionery Workers' International Union of America (Complainant) v. The Great Atlantic & Pacific Tea Co. Ltd. Bakery Division (Respondent).

The Board endorsed the Record as follows:

"On the basis of the evidence, the Board finds that the complainant has failed to satisfy the Board that the respondent refused to hire Joe Pelenyi contrary to the provisions of section 50 (a) of The Labour Relations Act."

5630-62-U: United Electrical, Radio & Machine Workers of America (UE) (Complainant) v. Tung-Sol of Canada Limited (Respondent).

The Board endorsed the Record as follows:

"The aggrieved person, Mary Soulliere, was discharged by the respondent on October 26th, 1962. Following a direction of the Board she was reinstated by the respondent on January 21st, 1963. The respondent again discharged her on March 8th, 1963.

The complainant alleges that Mary Soulliere was discharged on March 8th for the same cause as her discharge in October, 1962, namely that she was active in assisting the complainant in its efforts to organize the employees of the respondent. The respondent, having failed in its first effort to discharge her, is now seeking to accomplish its original purpose by the second discharge. The respondent alleges that she was discharged because she failed to meet the company's production standards.

Having regard to all the evidence, the complainant has failed to satisfy the Board that the respondent discharged Mary Soulliere on March 8th in violation of section 48 or section 50 of The Labour Relations Act.

The complaint accordingly is dismissed."

Board Member E. Boyer dissented and said:

"I dissent.

Having regard to all the evidence, I would have found that Mary Soulliere was discharged by the respondent contrary to The Labour Relations

Act. The testimony of Edward Granfield, the plant manager, that he told Soulliere that she was only rehired because the Board ordered her reinstatement, in itself, is evidence that her subsequent discharge was part of an arranged plan."

5631-62-U: United Electrical, Radio & Machine Workers of America (UE) (Complainant) v. Tung-Sol of Canada Limited (Respondent).

The Board endorsed the Record as follows:

"The complainant adduced evidence that the aggrieved person, Frank Holroyd, was selected as a member of the union committee that has been attempting to negotiate a collective agreement with the respondent company since January of this year. Holroyd attended bargaining sessions between the company and the union on March 11th and 12th. At the latter session he referred to personal grievances by way of examples with respect to a number of issues under discussion. The complainant alleges that he was discharged on March 13th because of his conduct on the union negotiating committee.

The respondent alleges that Holroyd was discharged on March 13th for insubordination, in that he walked out of the office of the personnel manager, although warned not to do so, during the discussion of a "late letter notice".

The evidence reveals that Holroyd upon being hired in June, 1962 was immediately sent on a five week training course at one of the respondent's plants in the United States. Since that time he has been working at the company's Brampton plant. On December 27th, 1962 he suffered a back injury and was on leave of absence until his return on March 4th. Despite evidence that Holroyd had a "late" record in the fall of 1962 and was given a "late letter notice" on December 13th, there is no evidence to suggest that the company was not satisfied with Holroyd's performance as an employee at the time he returned to work on March 4th.

While Holroyd's conduct in walking out of the office of the personnel manager may well have been sufficient reason to discharge him, the complainant has satisfied us that he, in fact, was discharged for his union activities, contrary to The Labour Relations Act.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the transparency and accountability of the organization. This section also outlines the various methods used to collect and analyze data, ensuring that the information is reliable and up-to-date.

2. The second part of the document focuses on the financial aspects of the organization. It provides a detailed overview of the budget, including the projected income and expenses for the upcoming year. This section also discusses the various financial risks and how they are being managed to ensure the organization's financial stability.

3. The third part of the document addresses the operational aspects of the organization. It describes the various processes and procedures that are in place to ensure the efficient and effective delivery of services. This section also discusses the various challenges that the organization is facing and how they are being addressed.

4. The fourth part of the document discusses the human resources of the organization. It provides a detailed overview of the current staff levels and the various roles and responsibilities of the different departments. This section also discusses the various training and development programs that are in place to ensure that the staff is equipped with the necessary skills and knowledge to perform their duties effectively.

5. The fifth part of the document discusses the legal and regulatory aspects of the organization. It provides a detailed overview of the various laws and regulations that the organization is subject to and how they are being complied with. This section also discusses the various legal risks and how they are being managed to ensure the organization's legal compliance.

6. The sixth part of the document discusses the environmental and social aspects of the organization. It provides a detailed overview of the various environmental and social issues that the organization is facing and how they are being addressed. This section also discusses the various initiatives that are in place to promote sustainability and social responsibility.

7. The seventh part of the document discusses the future of the organization. It provides a detailed overview of the various strategic initiatives that are in place to ensure the organization's long-term success. This section also discusses the various challenges that the organization is facing and how they are being addressed.

8. The eighth part of the document discusses the conclusion of the document. It summarizes the key findings of the document and provides a final overview of the organization's current state and future prospects. This section also discusses the various recommendations that are being made to ensure the organization's continued success.

On the evidence before us, and taking into account the average hours worked per day and the wages received by Holroyd up to the date of his discharge, we assess his loss of wages at \$105.60 for the period of time he was off work from March 13th until his reinstatement on March 20th.

The Board determines that as compensation for his loss of wages, the respondent shall forthwith pay to Frank Holroyd the sum of \$105.60."

Board Member H.F. Irwin dissented and said:

"I dissent.

At the hearing, the Board was informed that Frank Holroyd had been reinstated and was back at work. The discharge was reduced to a four day suspension for Holroyd's act of insubordination in walking out of the personnel manager's office while being interviewed. Under the circumstances, I would have dismissed the complaint. In my opinion it was never the intention that section 65 of the Act should interfere with disciplinary action for cause."

5632-62-U: United Electrical, Radio & Machine Workers of America (UE) (Complainant) v. Tung-Sol of Canada Limited (Respondent).

The Board endorsed the Record as follows:

"The aggrieved person, Sylvia Sims, was discharged by the respondent on November 1st, 1962. Following a direction of the Board she was reinstated on January 21st, 1963. The respondent again discharged her on March 12th, 1963.

The complainant alleges that Sylvia Sims was discharged on March 12th for the same cause as her previous discharge, namely that she actively assisted the complainant in its efforts to organize the employees of the respondent. The respondent alleges that she was discharged on March 12th because of her absentism record and also because she failed to meet the respondent's quality and production standards.

Having regard to all the evidence, the complainant has failed to satisfy the Board that Sylvia Sims was discharged on March 12th in violation of section 48 or section 50 of The Labour Relations Act.

The complaint accordingly is dismissed."

Board Member E. Boyer dissented and said:

"I dissent.

Having regard to all the evidence, I would have found that Sylvia Sims was discharged by the respondent contrary to The Labour Relations Act. In my opinion, if the evidence with respect to her absenteeism record was justification for her discharge, it is a poor reflection on the personnel policies of the respondent."

5761-63-U: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Warehousemen and Miscellaneous Drivers Union Local 419 (Complainant) v. Holland River Gardens Company Limited (Respondent).

5800-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. The Jockey Club Limited (Respondent).

- and -

5849-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. J.J. Stewart (Respondent).

- and -

5850-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. The Jockey Club Limited (Respondent).

- and -

5851-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. Baron Von Richthofen (Respondent).

- and -

5852-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. Frank H. Merrill, Jr. (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 112)

5847-63-U: North Bay General Workers' Union, Local No. 1603, Canadian Labour Congress (Complainant) v. Cochrane-Dunlop Hardware Limited, Retail and Wholesale Divisions at North Bay, Ontario (Respondent).

5889-63-U: United Steelworkers of America (Complainant) v. Jiger Corporation Ltd. (Respondent).

5912-63-U: International Woodworkers of America (Complainant) v. R.W. Beattie Furniture (Respondent).

5920-63-U: Harold John Dale (Complainant) v. Fassell Construction Co. Superintendent (H.S. McIntyre) (Respondent).

5949-63-U: Textile Workers Union of America, CLC, AFL-CIO (Complainant) v. The Midland Plastics Division of Midland Industries Limited (Respondent).

6070-63-U: International Union of Operating Engineers, Local 700 (Complainant) v. Watson Manufacturing Company Limited (Respondent).

6201-63-U: Anthony Siauciunas (Complainant) v. King Shopping Plaza (London) Ltd. (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

3246-61-R: The Sudbury General Workers Union, Local 101, Canadian Labour Congress (Applicant) v. Cima Limited, carrying on business as the sole proprietor of Bannon Brothers (Respondent). (DISMISSED MAY 1963).

On January 10, 1963 the Board ordered that a representation vote be taken of employees of the respondent in the bargaining unit. The Board endorsed the Record in part as follows:

"Prior to October, 1961 the respondent employed 3 seamstresses (Rita Beauchamp, H. Sipelis and A. Martin) who were paid on a weekly basis. Immediately prior to October, 1961, the respondent attempted to sever the employer-employee relationship which existed between the respondent and the seamstresses and further attempted to create a new relationship with the seamstresses. In the latter part of September, 1961, the manager of the respondent held a meeting with the 3 seamstresses and advised them that they would no longer be working for the respondent. The respondent advised the seamstresses that the company would in future "farm out" the work which previously was performed by the seamstresses and would pay for such work in

accordance with a schedule of rates which was presented to the seamstresses. The 3 seamstresses were given the first opportunity to perform the work formerly done by them as employees because of their long association with the respondent. On or about October 1st, 1961, the seamstresses were given their termination pay, holiday pay, unemployment insurance books and subsequent to October, 1961, the respondent no longer paid The Ontario Hospital Insurance on behalf of the seamstresses.

It is quite apparent from all the evidence that the company attempted to create an independent contractor relationship with the seamstresses and counsel for the respondent having prepared a detailed brief on the law relating to the status and definition of independent contractors, argued that such a relationship was in fact established on October 1st, 1961.

In the course of his argument, counsel for the respondent argued that the four tests enunciated by the Board in the Canada Bread Company Limited Case, C.C.H. Canadian Labour Law Reporter 416,223, C.L.S. 76-807 had been fulfilled by the respondent. These four tests and the evidence relating to each of these tests may be summarized as follows:

(a) Control; the degree of control over the seamstresses was drastically reduced subsequent to September, 1961. The seamstresses could come and go as they pleased so long as they were not behind in their work and the only check made on their work was to determine when the work would be completed. The respondent's manager stated that the seamstresses "have worked there a long time, know what to do and the work order gives them complete information".

(b) Ownership of Tools; subsequent to October 1, 1961, the seamstresses could do their work either on the respondent's machines at the respondent's premises or on their own machines at their respective homes. When work was performed on the respondent's machines, the respondent supplied the needles and thread and looked after the repair of the machines. The major cleaning and upkeep in the respondent's sewing room was the respondent's responsibility. Although the respondent's work could be done at the homes of the seamstresses, as a matter of

convenience, all the respondent's work was performed on the respondent's premises with the machines owned by the respondent.

(c) Chance of Profit; there was an opportunity for the seamstresses to profit by the arrangements that were in effect after October 1st, 1961 and the amount of profit depended on the volume of work available, the speed at which the work was performed and the number of mistakes which each seamstress had to correct for which they received no pay. If there was no work available from the respondent no profit would be forthcoming. The seamstresses also had the opportunity of doing work which they themselves arranged. Such work from outside sources could be performed either on the respondent's premises or at the home of the seamstresses. Although some of the seamstresses had in fact done work from outside sources on the respondent's premises, such work was a very small percentage of the total work performed on the respondent's premises.

(d) Risk of Loss; although there was a chance that no profit would be made, it appears from all the evidence that there was in fact no risk of loss with respect to the work performed for the respondent. If the work of the seamstresses had to be repaired or remade, the seamstresses had to perform such work without compensation, however, there is no evidence that the seamstresses were ever charged the cost of wasted materials that were damaged or destroyed by their mistakes.

Having regard to all the evidence and the representations of the parties, we find that the seamstresses are not independent contractors. In so finding, we have regard to the fact that the respondent owned the machines and supplied the needles and thread and repairs to the machines on which all the respondent's work was performed. In addition, and more important, there was no risk of loss to the seamstresses. The respondent bears all the loss suffered to its materials as a result of any mistakes made by the seamstresses.

Although we find that some of the tests have been satisfied and others satisfied in part, we find that all four tests must be satisfactorily fulfilled in order that the Board find that the

seamstresses are independent contractors. We therefore find that, in making the arrangement with the seamstresses which took effect on October 1st, 1961, the respondent failed to cause the seamstresses to be sufficiently independent to change their relationship from one of employment to that of an entrepreneurial nature."

Board Member R.W. Teagle dissented and said:

"I dissent. I would have found the seamstresses to be independent contractors and not employees of the respondent included in the bargaining unit and I would have dismissed the application."

On April 8, 1963 the Board further endorsed the Record as follows:

"Following the taking of the representation vote in this matter directed by the Board on the 10th day of January, 1963, the applicant objected to having this matter disposed of on the basis of the representation vote which was conducted on the 6th day of February, 1963.

The applicant objected to the contents of a letter which was handed by the respondent to each of its employees some two days prior to the "silent period" immediately preceding the representation vote.

The applicant argues that the letter delivered by the respondent to its employees exceeded the permissive provisions of section 48 of the Act in that, having regard to the influential relationship which exists between an employer and its employees, the letter contained the following statement: "am I prepared to substitute a good employer whom I already know personally by a third person stranger, a boss whom I do not know except by irresponsible, fictitious and impossible promises?" The Board finds that this statement was an attempt by the respondent to create an issue which was not the issue contemplated by the representation vote directed by the Board. The only issue to be considered by the employees was whether the employees in their employment relations with the respondent wished to bargain collectively through the applicant. The issue created by the respondent was whether the employees of the respondent

were prepared to choose between the respondent and the applicant as a "boss".

In addition, there was attached to the letter a notice to all employees of the respondent which read:

"Remember that a vote "NO" is an expression of confidence in favour of your employer!

Better the employer you know, than the BOSS whom you dont!

Mark your ballot as follows:-

This statement was followed by a reproduction of the ballot to be used by the employees in the representation vote and this facsimile of the ballot was marked against the union.

By directing the employees to vote against the union and by creating a fictitious issue in the representation vote, the Board is of opinion that the letter delivered by the respondent to its employees amounted to undue influence by the respondent contrary to the provisions of section 48 of The Labour Relations Act.

In view of this finding it is unnecessary for the Board to comment on the alleged implied threats and promises contained in the respondent's letter.

The Board therefore finds that the representation vote conducted in this matter did not truly reflect the wishes of the employees freely exercising their choice whether or not they wished to bargain collectively through the applicant.

The Board therefore directs that a new representation vote be taken of the employees of the respondent in the bargaining unit."

5282-63-R: Bakery & Confectionery Workers' International Union of America, Factory Bakers Union, Local 264 (Applicant) v. N. D. Applegate Ltd. (Respondent). (GRANTED MAY 1963).

The Board endorsed the Record in part as follows:

"Counsel for the respondent contends that the applicant's jurisdiction under its constitution does not extend to cover persons employed in a retail grocery. He argues that the applicant's constitution does not permit it to represent in

collective bargaining, or to admit to membership, any of the persons in the bargaining unit for which it asks to be certified. He argues, therefore, that the applicant has no status to be certified for this bargaining unit. He relies on the following provisions in the constitution as supporting his argument.

Article II, section I.

The Bakery and Confectionery Workers' International Union of America shall exercise and maintain jurisdiction over all workers employed in the manufacture, production, shipping and in-plant movement of (1) all bakery products such as but not limited to bread, rolls, cake, pies, biscuits, crackers, pretzels, pastries and matzos; (2) confectionery products such as but not limited to ice cream, candies, candied fruits, preserves and sweets of every description; (3) all macaroni and paste products; (4) kindred products; (5) any and all food products and (6) any and all ingredients from which the foregoing products are made.

Article XVII, section I.

Any person of good character shall be eligible for membership in the International Union provided he fulfills each of the following qualifications:

- (1) Is or has declared his intention of becoming a citizen of the United States or Canada, and
- (2) Is employed in an industry under the trade and geographical jurisdiction of the International Union.

Candidates must join the local union having jurisdiction over them. Where the number of bakery and confectionery workers in any locality is insufficient to form a local union, they must belong to the nearest local union, in which their dues and assessments then become payable, and with membership rights and privileges the same as the other members of that local union.

The evidence in this case is that the union has filed evidence of membership for 11 of the 16 persons in the bargaining unit. While the constitution describes the applicant's jurisdiction and provides that persons employed in an industry under its jurisdiction shall be eligible for membership, the constitution does not in terms prohibit the union from representing employees in a retail grocery or from admitting them to membership. The applicant states, and its evidence indicates, that membership is held open to all persons in the bargaining unit and that the applicant's constitution is not being applied to prohibit this union from representing these persons in collective bargaining. There is no evidence that any of the persons affected by the constitutional provisions relating to eligibility for membership have been denied membership or have complained in any way about these provisions. On the evidence before us we are constrained to conclude that the argument raised by counsel for the respondent must fail.

The document submitted as indicating opposition to the certification of the applicant consists of a single page of paper containing a handwritten preamble under which there are affixed by glue, 9 individual slips of paper, each bearing the signature of an employee, the date, and the signature, as witness, of one Mildred Applegate. This same witness testified that some time after these slips of paper were signed she took them home and glued them to the document which she then sent to the Board. She explained that the petition was prepared in this way in order to maintain secrecy as to the identity of those persons who opposed the union. There is nothing written on the individual slips of paper to indicate the intention or purpose of the signatories in signing them or that they were intended to be part of the document to which they were later attached by Mildred Applegate. In other words, in order to find any connection between the document bearing the preamble, and each of the individual slips of paper, and to find that in signing them the signatories intended to oppose the certification of the applicant, we must rely entirely on oral evidence. The only evidence given in this respect was that of Mildred Applegate. None of the persons who signed the slips of paper which were attached to the document were called to give evidence. In all the circumstances of this case, we are not persuaded that we should rely on the evidence adduced as indicating opposition to the certification of the applicant as sufficient to weaken

the evidence of membership submitted by the union."

5829-63-R: International Brotherhood of Teamsters
Chauffeurs Warehousemen and Helpers Local 419 Warehousemen
and Miscellaneous Drivers (Applicant) v. Lenson Celery
Hearts Ltd. (Respondent). (GRANTED MAY 1963).

The Board endorsed the Record as follows:

"A document was filed in opposition to the application of the applicant on behalf of certain employees of the respondent by Adam Scinocco and he testified that he prepared the document and circulated the document among the employees of the respondent and obtained the signature of some of the employees of the respondent on the document. Mr. Scinocco is a tractor driver employed by the respondent. In addition, Mr. Scinocco is a sub-contractor of the respondent and regularly leases to the respondent three trucks which are owned by Mr. Scinocco and operated by employees of Mr. Scinocco. The drivers of these three trucks are paid by Mr. Scinocco. The dock foreman of the respondent supervises these employees of Mr. Scinocco when the trucks are leased to the respondent.

The Board therefore finds that Mr. Scinocco is an employee of the respondent with a special interest in that Mr. Scinocco shares management responsibility with the respondent with respect to the drivers of the three leased vehicles owned by Mr. Scinocco. Although Mr. Scinocco does not exercise managerial authority with respect to the employees of the respondent in the bargaining unit, his interests are so intermingled with the interests of the respondent that his position as an employee of the respondent is inseparable from his relationship as an employer sub-contractor of the respondent and in these special circumstances, the Board is not prepared to hold that the document which was originated and circulated by Mr. Scinocco and submitted as indicative of opposition by some of the employees of the respondent to the application of the applicant, weakens the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote in this matter."

5403-62-R: United Electrical, Radio & Machine Workers of America (UE) (Applicant) v. Northern Electric Company Limited (Respondent) v. Northern Electric Employees Association (Intervener). (GRANTED MAY 1963).

The Board endorsed the Record in part as follows:

"The applicant has requested that a pre-hearing representation vote be taken.

The terminal date of this application was February 18th, 1963. The Board's Examiner had conducted his pre-hearing representation vote meeting on February 19, 1963 and immediately prepared and submitted his pre-hearing representation vote meeting report to the Board.

On February 26th, 1963 the Board received a telegram from the solicitor for the Communication Workers of America advising the Board that the Communication Workers of America challenged the "constitutional jurisdiction of the Board to deal with certification application".

The Communication Workers of America Union is not a party to this proceeding, nor has it filed any evidence of membership for persons purporting to be employees of the respondent in the bargaining unit. The Communication Workers of America is a stranger to this proceeding and has no status to be heard or to argue the issues raised in its telegram in this matter."

5683-62-R: International Hod Carriers', Building and Common Labourers' Union of America, Local 527 (A.F.L.) (C.L.C.) (Applicant) v. Thomas Fuller Construction Company (1958) Limited (Respondent) v. Canadian Construction Workers' Union, Division No. 1 (N.C.C.L.) (Intervener). (GRANTED MAY 1963).

On April 29, 1963 the Board endorsed the Record in part as follows:

"In this case the applicant seeks to replace the intervener as bargaining agent for some of the respondent's employees. In such a case it has been the invariable practice of the Board for many years to order a representation vote among the employees affected by the application. This practice has been followed regardless of the number of employees who have become members of the applicant providing of course the applicant has the minimum

number required by the Act to entitle it to a vote. In other words even though the evidence were to satisfy the Board that every employee in the bargaining unit had joined the applicant, nevertheless the Board has, in the past, always ordered a representation vote among the employees in which both the names of the applicant trade union and the incumbent trade union appeared on the ballot. The question raised in the present case is whether circumstances may arise where an applicant trade union would be entitled to certification without a representation vote being conducted by the Board or, conversely, whether circumstances may arise where the bargaining rights of an incumbent trade union may be terminated without a representation vote.

There does not appear to be anything in The Labour Relations Act which makes it mandatory on the Board to order a representation vote in such cases providing the applicant has as members over 55% of the employees in the bargaining unit. On the other hand, as was pointed out above, the Board has invariably exercised the discretion given it in such a case, to order a representation vote. The experience of the Board is that this policy has worked well over the years and we do not believe that it should be departed from save in exceptional circumstances.

The Board realizes that under the legislation an incumbent trade union and an employer have certain advantages not open to a trade union seeking to displace the incumbent. The Board is also not unaware of the fact that an incumbent trade union and/or the employer may, under the guise of exercising rights under the legislation, adopt a course of action which goes beyond that permitted by the statute. This Board does not and will not condone such conduct and in a proper case, may conclude that a representation vote between an applicant and incumbent trade union would not reveal the true wishes of the employees. However we stress the words 'proper case'. In our view the evidence must be strong and clear cut and leave no doubt in the minds of the Board both as to the nature and extent of the conduct involved and as to its effect, namely, that the true wishes of the employees would not likely be disclosed by a representation vote.

In the instant case the conduct of the chief steward of the incumbent raises suspicions in our minds. However it must not be overlooked that under

the terms of the collective agreement between the incumbent trade union and the respondent employer he, as chief steward and/or president of the union, was entitled to be on the job-site. Moreover that same agreement contained a union security clause. Again, the act of the respondent in laying off employees after they had signed a petition favouring the incumbent union is hardly consistent with the allegation that the respondent was acting in collusion with the incumbent. After carefully considering all the evidence and the representations of the parties we cannot find that the evidence is so strong and clear as to leave no doubt in our minds that the actions of the chief steward and the respondent went beyond that permitted under the collective agreement and the legislation or that the true wishes of the employees would not likely be disclosed by a representation vote.

In view of the somewhat suspicious circumstances which have emerged in the present case, and so that this matter may be made clear to all concerned prior to the taking of the vote, the Board wishes to make it clear that should it become necessary, it will subject to the most searching scrutiny everything that the Canadian Construction Workers' Union, Division No. 1 (N.C.C.L.) and the Thomas Fuller Construction Company (1958) Limited or any person associated with them may do, between the date of this decision and the date the vote is taken, which may even in the slightest degree have the effect of influencing the employees in the free expression of their desires. Anything untoward will be dealt with as the circumstances require. This paragraph is to be incorporated in red on Form 48, Notice of Taking of Vote."

TERMINATION INDEXED ENDORSEMENT

5186-62-R: National Refractories Ltd. (Applicant) v. United Electrical, Radio and Machine Workers of America (U.E.) (Respondent). (DISMISSED MAY 1963).

(Re: National Refractories Ltd.,
Port Robinson, Ontario).

The Board endorsed the Record as follows:

"Application under section 79 (1) of The Labour Relations Act. The applicant company requested the Board to reconsider its decision of November 5th, 1962, wherein it certified the respondent trade union,

and either to revoke the certificate issued to the respondent or to direct that a representation vote be taken among the employees in the bargaining unit.

The respondent opposes the application and, as a preliminary objection, submits that the application to the Board to reconsider its decision is untimely in view of the provisions of section 46 of The Labour Relations Act.

For the purposes of this case we shall assume, without expressing any concluded opinion on the point, that, in a proceeding of the nature with which we are concerned, the Board has jurisdiction to grant the relief requested at this time.

The material facts in this case are not in dispute since the evidence before the Board was submitted by agreement of counsel for the parties. This division of the Board, on November 5th, 1962, certified the respondent as the bargaining agent of all employees of the applicant in the Township of Thorold with certain exceptions not here material. Following notice given by the respondent, the parties met and bargained on November 21st and 28th without concluding a collective agreement and, on the request of the respondent, conciliation services were granted to them. The conciliation officer failed to effect an agreement and the respondent was "no boarded" on February 12th, 1963. Upon the request of the respondent, another officer convened a further meeting of the parties in February, 1963, but was unable to effect an agreement between them.

While the parties were thus engaged in collective bargaining, 11 employees, members of the respondent, "walked off" their jobs on December 4th, 1962, and followed up this action with picketing of the applicant's premises. By letter dated December 6th, 1962, the applicant notified each of the 11 persons either to provide a reason for his absence or return to his employment on December 10th or the absence would be treated as the quitting of his employment. They did not return to work and, by a further letter dated December 10th, 1962, the applicant notified each of them that "we can only conclude that you wish to terminate your employment with us", and took action to effect a termination of their employment. By letter dated December 12th, 1962, each of these employees "protested" the applicant's right to terminate his employment and stated,

"I am still an employee of National Refractories Ltd.". On December 17th, 1962, 10 of the 11 persons "reported to Company plant to seek work" and were told by Mr. Schissler, the superintendent, "that there was no work available and that other men had been hired to take their place". The instant application was made by the applicant on January 2nd, 1963.

At all times material to this application the number of employees in the bargaining unit was 14. The respondent does not claim as members any of the employees presently in the bargaining unit.

The applicant submits that, having regard to the respondent's total loss of membership in the bargaining unit, the Board should determine, at this time, whether the respondent "in fact represents the present employees". The applicant thus rests its claim for relief in this case on the issue of "representation". Let us assume, for present purposes but without expressing any opinion on the point, that the applicant would be entitled to relief if it established that the employees in the bargaining unit no longer desire to be represented by the respondent. The evidence before the Board relates solely to the matter of union membership and we have no evidence whatsoever before us as to the actual wishes of the present employees concerning the matter of representation by the respondent. As the Board said in the Bentley's Sporting Goods Ltd. Case, (1959) C.C.H. Canadian Labour Law Reporter, 1955-59 Transfer Binder, ¶16,129; C.L.S. 76-629, "it is not uncommon for an employee to retain his membership in a union for purposes other than representation, or to wish to have a union represent him in bargaining without his being prepared to accept the obligations of membership". Accordingly, on the basis of the evidence before the Board, we are not prepared to vary or revoke our decision of November 5th, 1962, in this matter.

The application is accordingly dismissed."

SECTION 65 INDEXED ENDORSEMENTS

5800-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. The Jockey Club Limited (Respondent).

5849-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. J.J. Stewart (Respondent).

5850-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. William Cole (Respondent).

5851-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. Baron Von Richthofen (Respondent).

5852-63-U: Local Union No. 20 of the International Union of Journeymen Horseshoers of the United States and Canada (Complainant) v. Frank H. Merrill, Jr. (Respondent).

The Board endorsed the Record in each of the above matters as follows:

"On consent of counsel for each of the parties, the evidence and argument presented with respect to all of the separate complaints made on behalf of James Smith and Samuel Keyruze against The Jockey Club Limited (Board file No. 5800-63-U), J. J. Stewart (Board file No. 5849-63-U), William Cole (Board file No. 5850-63-U), Baron Von Richthofen (Board file No. 5851-63-U), Frank H. Merrill, Jr., (Board file No. 5852-63-U) were heard together.

Certain preliminary objections were raised at the commencement of the hearing by counsel for the respondents to the effect that the Board was without jurisdiction to entertain these complaints under The Labour Relations Act. One of these objections, and, in view of our decision thereon, it is the only one necessary for us to consider, is that James Smith and Samuel Keyruze, the persons alleged to have been discriminated against, are independent contractors and, therefore, unable to invoke the remedial provisions of section 65 of The Labour Relations Act. The evidence and argument presented by the parties at the hearing was restricted to the determination of this one preliminary issue.

It was stated by counsel for the complainant that, if on the evidence adduced, the Board found that the two persons were independent contractors then it was his position that the complaints on their behalf could not be made under section 65 of The Labour Relations Act.

We have given careful consideration to the evidence presented, and to the thorough arguments of counsel for all the parties. Having regard to the principles enunciated in Montreal v. Montreal Locomotive Works Ltd., [1946] 3 W.W.R. 748 (P.C.), and in Re Parkin Elevator Co., (1916) 37 O.L.R. 277, and to the past decisions of this Board, we are constrained to find that James Smith and Samuel Keyruze are independent contractors. While the services rendered by these blacksmiths are customarily restricted to persons engaged in horse racing, and not infrequently for extended periods to the same persons, their services are with respect to, and result entirely from independent and individual contracts. Their services are not rendered as employees under a contract of employment but as independent craftsmen who at all times remain their own masters as to when, how and for whom they will work and for how much.

In view of our finding that James Smith and Samuel Keyruze are independent contractors and having regard to the statement of counsel for the complainant, any claim which James Smith and Samuel Keyruze may have against the respondents must be asserted in another forum.

The complaints are dismissed."

CONCILIATION INDEXED ENDORSEMENT

5901-63-C: Local Union No. 30 of the Bricklayers, Masons and Plasterers' Union (Applicant) v. The Belleville and District Builders' Exchange (Respondent).
(DISMISSED MAY 1963).

The Board endorsed the Record as follows:

"Application for conciliation services.

It is clear that W. R. Bradshaw Construction did not become a member of the respondent Exchange until after the operative date of the collective agreement, relied upon by the applicant as establishing its bargaining rights. There is no evidence before the Board suggesting in any way that W. R. Bradshaw Construction ever agreed to be bound by the said collective agreement or that this was ever discussed with the union. In our opinion these facts bring the case squarely within the principles set out in The Foundation Company Case, 1957, C.C.H. Canadian Labour Law Reports, Transfer Binder, '55-'59 ¶16,078, C.L.S.

76-555. The Board therefore finds that W. R. Bradshaw Construction was not and it not bound by the collective agreement between the applicant and the respondent, effective October 1, 1957.

With respect to the application, generally, the collective agreement between the parties was for a term of two years to September 30, 1959. The evidence is that no notice was given under the terms of the agreement and by virtue of clause 3, the agreement was automatically renewed for one year. Thereafter until March, 1963, the parties had no dealings one with the other. There is no evidence to suggest that the applicant made any attempt to discuss the agreement or labour relations matters with the respondent Exchange. There is no suggestion in the evidence of any contact whatsoever between the parties. Nevertheless the applicant submits that the agreement has renewed itself each year and is currently operative.

In situations of this kind the Board has said that as a general rule it will have regard to a second automatic renewal but thereafter the onus is on the union to satisfy the Board that it has not abandoned its bargaining rights. This it may do by showing that it retained an interest through contact with the other party to the agreement. Just what contact is necessary depends on the facts in each particular case. In this case there was none.

In these circumstances the Board finds that the applicant has abandoned its bargaining rights which it had under the said collective agreement with the respondent.

In the result the application is dismissed."

PROSECUTION SPECIAL ENDORSEMENT

5181-62-U: King Shopping Plaza (London) Limited (Applicant)
v. Clinton T. Andison (Respondent). (DISMISSED MAY 1963).

- and -

5182-62-U: King Shopping Plaza (London) Limited (Applicant)
v. Thomas G. Harkness (Respondent). (DISMISSED) MAY 1963).

The Board endorsed the above matters as follows:

"This is an application for consent to institute a prosecution against the respondent on the ground that "the Respondent as an officer, official or agent of a trade union, did council [sic], procure, support and encourage an unlawful strike contrary to Section 55 of the Labour Relations Act".

At all times material to this application, the applicant company was engaged on a construction project at London. The carpenters and labourers employed on this project were employees of the applicant while the employees engaged on plumbing in connection with the project were employees of William S. Salmon Limited, the plumbing sub-contractor employed on the project by the applicant.

Carpenters, labourers and plumbers were scheduled to work on the applicant's project on January 7th, 8th and 9th, 1963, and work was available for the employees in each of these classifications on those days. On the morning of each day in question, a picket line was formed at the applicant's project and was maintained throughout each day. The pickets carried placards reading "carpenters on strike". On each day in question the carpenters and labourers employed by the applicant worked as scheduled, but the plumbers, the employees of William S. Salmon Limited, did not cross the picket line and did not work. There is evidence before us that William S. Salmon Limited is a member of The London Builders Exchange and, as such, was bound by a subsisting collective agreement between The Mechanical Contractors Section and Local 593, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States of America at all times material to this application.

If we assume for present purposes, but without making a finding to that effect, that an unlawful strike occurred in the circumstances of this case, it is clear that any persons who engaged in such unlawful strike were not employees of the applicant but were employees of its sub-contractor, William S. Salmon Limited.

The granting or withholding of consent to institute a prosecution under section 74 (1) of The Labour Relations Act is a matter of discretion for the Board. In cases where consent to prosecute involves an unlawful strike, the Board, in exercising its discretion in favour of granting its consent, should generally look for an employment relationship between the applicant and the persons who engaged in the unlawful strike with a view to granting

relief to an applicant whose employment relationship has been disrupted by the strike. In this case there is no employment relationship between the applicant and the employees of William S. Salmon Limited and it is significant to note that no complaint has been made by William S. Salmon Limited about the conduct of its employees or about the conduct of the respondent. In the circumstances, the Board is not prepared to give its consent to the institution of a prosecution of the respondent by the applicant.

In view of our conclusion, it is unnecessary for the Board to deal with any other issues in this matter."

SPECIAL ENDORSEMENT IN CONCILIATION

5728-62-C: The General Truck Drivers' Union, Local No. 879, of Ontario affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Canal Cartage Company Limited (Hamilton) - (Respondent). (DISMISSED APRIL 1963).

The Board endorsed the Record as follows:

"The applicant has not filed with its application a copy of any existing or recently-expired collective agreement between it and the respondent as required by section 12 of the Board's Rules of Procedure.

The application is accordingly dismissed."

5750-63-C: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Concrete Column Clamps Limited (Oshawa) (Respondent). (REFERRED APRIL 1963).

The Board endorsed the Record as follows:

"Although the respondent, as is stated in paragraph 6 of the reply, may have "subrogated" its bargaining to the labour relations committee of the Ottawa Builders' Exchange, it is clear that the collective agreement upon which the request of the applicant is based is between the applicant and the respondent. While there is no objection to the course of action which the respondent appears to be following, the Exchange in question could not be a party to conciliation proceedings. In these circumstances the applicant's

request that conciliation services be made available to the parties is granted with respect to the employees of the respondent in the bargaining unit defined in the collective agreement between the parties effective May 1st, 1961.

The matter is referred to the Minister."

5900-63-C: Operative Plasterers and Cement Masons International Association of the United States and Canada, Local 117 (Applicant) v. United Lathing and Plastering Contractors Association (Respondent). (REFERRED MAY 1963).

The Board endorsed the Record as follows:

"Regardless of the merits of the positions taken by the parties to this dispute, it is clear from the evidence that the parties are deadlocked in their bargaining and that further meetings between the parties without the intervention of a third party are bound to be fruitless. In these circumstances and having regard to the provisions of section 93(2) of The Labour Relations Act, the applicant's request that conciliation services be made available to the parties is granted with respect to the bargaining unit employees of the respondent's members who are bound by the collective agreement between the parties to this application, effective February 8th, 1962.

The matter is referred to the Minister."

5985-63-C: The Resilient Floor Contractors Association of Ontario (Toronto) (Applicant) v. The Resilient Floor Contractors Association of Ontario (Toronto Section) on behalf of R. Knight Floor Covering and Terrazzo Mosaic & Tile Co. Ltd., and The Resilient Floor Workers Section of The Toronto and District Council of Carpenters and Millmen, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Respondent). (REFERRED MAY 1963).

The Board endorsed the Record as follows:

"This application for conciliation services by the applicant, The Resilient Floor Contractors Association of Ontario (Toronto Section), relates to four employers, namely: Duguid & Barnett Ltd., Terrazzo Mosaic & Tile Co. Ltd., Trend Tile & Acoustics Ltd., and R. Knight Floor Covering.

The applicant relies on four collective agreements. In the case of Duguid & Barnett Ltd. and Trend Tile & Accoustics Ltd., the agreements are signed both by the applicant association and the employers. In the case of R. Knight Floor Covering and Terrazzo Mosaic & Tile Co. Ltd., the association did not sign the agreements.

After considering all the evidence and the representations of the parties, the Board finds that the applicant's request that conciliation services be made available to the parties should be granted in so far as it relates to Duguid & Barnett Ltd. and Trend Tile & Accoustics Ltd.

The Board finds further that the applicant association, as such, is not entitled to apply for conciliation services with respect to R. Knight Floor Covering and Terrazzo Mosaic & Tile Co. Ltd. because it was not a party to the collective agreements signed by these employers. However, in all the circumstances, the Board is of the opinion that the application should be treated as applications made by R. Knight Floor Covering and Terrazzo Mosaic & Tile Co. Ltd. in their individual capacities but as represented by the applicant association.

The name of the applicant in this case is therefore amended to read as follows:-The Resilient Floor Contractors Association of Ontario (Toronto Section) and The Resilient Floor Contractors Association of Ontario (Toronto Section) on behalf of R. Knight Floor Covering and Terrazzo Mosaic & Tile Co. Ltd.

The request of the applicant association that conciliation services be made available to the association and the respondent is granted with respect to the bargaining unit employees of Duguid & Barnett Ltd. and Trend Tile & Accoustics Ltd., who are bound by the collective agreements between the applicant association and the respondent, dated September 26, 1961.

The requests of R. Knight Floor Covering and of Terrazzo Mosaic & Tile Co. Ltd. that conciliation services be made available to the said applicants and the respondent are granted with respect to the employees of R. Knight Floor Covering in the bargaining unit defined in the collective agreement between R. Knight Floor Covering and the respondent, dated

April 25, 1961 and with respect to the employees of Terrazzo Mosaic & Tile Co. Ltd. in the bargaining unit defined in the collective agreement between Terrazzo Mosaic & Tile Co. Ltd. and the respondent, dated October 31, 1961.

The several matters are referred to the Minister."

6120-63-R: International Hod Carriers Building and Common Labourers Union, Local #493 (Applicant) v. Newman Bros. Limited (Respondent). (REFERRED MAY 1963).

The Board endorsed the Record as follows:

"The applicant's request that conciliation services be made available to the parties is granted with respect to the employees of the respondent in the bargaining unit defined in the Board's certificate dated April 17, 1963.

The attention of the parties is drawn to the fact that there is nothing in The Labour Relations Act which would prevent the parties from continuing to bargain pending the appointment of a conciliation officer.

The attention of the respondent is directed to the fact that the application is one affecting a trade union and employer in the construction industry and section 11 of The Labour Relations Act must be read subject to section 93 of the Act. In addition there is no suggestion that objection was taken to the absence of a bargaining committee at the meetings between the parties.

The matter is referred to the Minister."

6125-63-C: The Operative Plasterers and Cement Masons International Association, Local 117 (Applicant) v. Onorio & Company Plastering and Lathing (Respondent). (REFERRED MAY 1963).

The Board endorsed the Record as follows:

"Although under the provisions of The Labour Relations Act (see section 39) it would appear that the agreement between the parties signed February 13, 1963, will not cease to operate until February, 1964, the present application is, having regard to the provisions of clause 2 of the agreement and to the fact that meetings have taken place, a timely

one. In these circumstances the applicant's request that conciliation services be made available to the parties is granted with respect to the employees of the respondent in the bargaining unit defined in the collective agreement between the parties signed February 13, 1963.

The matter is referred to the Minister."

6170-63-C: International Association of Bridge, Structural and Ornamental Iron Workers - Local Union No. 700 (Applicant) v. Dominion Steel and Coal Corporation Limited, Canadian Bridge Works (Respondent). (REFERRED MAY, 1963).

The Board endorsed the Record in part as follows:

"Although the respondent has requested the Board to consolidate a number of applications currently before the Board, it has not been the Board's practice or policy to do so particularly where the bargaining rights of the parties flow from individual agreements. However the Board will draw to the attention of the Minister the fact that there are a number of applications being referred and to the fact that other applications are pending."

PART 2

| | | |
|----|--|-----|
| 1. | Applications and Complaints to the Ontario Labour Relations Board | S6 |
| 2. | Hearings of the Ontario Labour Relations Board | S6 |
| 3. | Applications and Complaints Disposed of by the Ontario Labour Relations Board by Major Types | S7 |
| 4. | Applications Disposed of by the Ontario Labour Relations Board by Types and by Disposition | S8 |
| 5. | Representation Votes in Certification Applications Disposed of by the Board | S9 |
| 6. | Representation Votes in Termination Applications Disposed of by the Board | S10 |

S7
TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

| | Number of applications disposed of | | |
|---|------------------------------------|--------------------------|----------------------|
| | May '63 | 1st 2 months of 63-64 | fiscal year 62-63 |
| I. Certification | 75 | 147 | 158 |
| II. Declaration Terminating Bargaining Rights | 12 | 27 | 14 |
| III. Declaration of Successor Status | - | 1 | - |
| IV. Conciliation Services | 147 | 277 | 265 |
| V. Declaration that Strike Unlawful | 2 | 2 | 2 |
| VI. Declaration that Lockout Unlawful | - | - | 3 |
| VII. Consent to Prosecute | 47 | 50 | 20 |
| VIII. Complaint of Unfair Practice in Employ- ment (Sect. 65) | 18 | 29 | 19 |
| IX. Miscellaneous | - | - | 1 |
| TOTAL | <u>299</u> | <u>533</u> | <u>482</u> |

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

| Disposition | | | | *Employees | | |
|-------------|---------|------------------|------------------|------------|------------------|------------------|
| | May '63 | 1st 2 mos. 63-64 | fiscal yr. 62-63 | May '63 | 1st 2 mos. 63-64 | fiscal yr. 62-63 |

I. Certification

| | | | | | | |
|-----------|-----------|------------|------------|-------------|-------------|-------------|
| Granted | 53 | 111 | 104 | 2010 | 3927 | 3027 |
| Dismissed | 14 | 22 | 34 | 398 | 729 | 2262 |
| Withdrawn | <u>8</u> | <u>14</u> | <u>20</u> | <u>109</u> | <u>201</u> | <u>283</u> |
| TOTAL | <u>75</u> | <u>147</u> | <u>158</u> | <u>2517</u> | <u>4857</u> | <u>5572</u> |

II. Termination of Bargaining Rights

| | | | | | | |
|-----------|-----------|-----------|-----------|------------|------------|------------|
| Granted | 8 | 20 | 13 | 161 | 446 | 335 |
| Dismissed | 4 | 7 | 1 | 206 | 261 | 3 |
| Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL | <u>12</u> | <u>27</u> | <u>14</u> | <u>367</u> | <u>707</u> | <u>338</u> |

* These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

S9 APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of Applications Disposed of
May 1st 2 months of fiscal year
63 63-64 62-63

III. Conciliation Services*

| | | | |
|-----------|------------|------------|------------|
| Referred | 139 | 266 | 242 |
| Dismissed | 2 | 3 | 2 |
| Withdrawn | <u>6</u> | <u>8</u> | <u>21</u> |
| TOTAL | <u>147</u> | <u>277</u> | <u>265</u> |

VI. Declaration that
Strike Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | - |
| Dismissed | - | - | - |
| Withdrawn | <u>2</u> | <u>2</u> | <u>2</u> |
| TOTAL | <u>2</u> | <u>2</u> | <u>2</u> |

V. Declaration that
Lockout Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | - |
| Dismissed | - | - | 3 |
| Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL | <u>-</u> | <u>-</u> | <u>3</u> |

VI. Consent to
Prosecute

| | | | |
|-----------|-----------|-----------|-----------|
| Granted | 2 | 4 | 9 |
| Dismissed | 2 | 2 | - |
| Withdrawn | <u>43</u> | <u>44</u> | <u>11</u> |
| TOTAL | <u>47</u> | <u>50</u> | <u>20</u> |

*Includes applications for conciliation services re unions claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE BOARD

Number of Votes
May 1st 2 months of fiscal year
'63 63-64 62-63

* Certification After Vote

| | | | |
|---------------------|----------|----------|----------|
| pre-hearing vote | 3 | 5 | 6 |
| post-hearing vote | 7 | 16 | 4 |
| ballots not counted | <u>-</u> | <u>-</u> | <u>-</u> |

Dismissed After Vote

| | | | |
|---------------------|-----------|-----------|-----------|
| pre-hearing vote | 3 | 3 | 4 |
| post-hearing vote | 7 | 11 | 12 |
| ballots not counted | <u>1</u> | <u>1</u> | <u>-</u> |
| TOTAL | <u>21</u> | <u>36</u> | <u>26</u> |

* Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE BOARD

Number of Votes
May 1st 2 months of fiscal year
'63 63-64 62-63
'63 63-64 62-63

| | | | |
|--------------------|----------|-----------|----------|
| * Respondent Union | | | |
| Successful | - | 1 | 3 |
| Respondent Union | | | |
| Unsuccessful | <u>3</u> | <u>9</u> | <u>1</u> |
| TOTAL | <u>3</u> | <u>10</u> | <u>4</u> |

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



JUNE 1963

ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING JUNE 1963

Bargaining Agents Certified During June
No Vote Conducted

5370-62-R: International Hod Carriers Building and Common Labourers Union, Local #506 (Applicant) v. Sonco Steel Products Company (Respondent).

Unit: "all employees of the respondent at its plant in Brampton, save and except foremen, persons above the rank of foreman and office staff." (63 employees in the unit).

5525-62-R: United Steelworkers of America (Applicant) v. The Peelle Company, Limited (Malton) (Respondent).

Unit: "all employees of the respondent at Malton, save and except foremen, persons above the rank of foreman, office and sales staff." (47 employees in the unit).

Board Member H.F. Irwin dissented in respect of the exclusion of one employee in the bargaining unit.

5756-62-R: Sudbury General Workers Union, Local 101, Canadian Labour Congress (Applicant) v. Sudbury Motors Limited (Respondent).

Unit: "all employees of the respondent at 500 Regent Street South in Sudbury, save and except foremen, persons above the rank of foreman, car salesmen, service salesmen and office staff." (40 employees in the unit).

(AGREEMENT OF THE PARTIES).

20576-60: Trenton Construction Workers Association, Local 52, affiliated with the Christian Labour Association of Canada (Applicant) v. Tange Company Limited (Respondent).

Unit: "all employees of the respondent at Trenton, save and except foremen, persons above the rank of foreman and office staff." (12 employees).

The Board endorsed the Record as follows:

"On November 13th, 1961, the Board dismissed the application made by the applicant, The Trenton Construction Workers Association, Local No. 52, affiliated with the Christian Labour Association of Canada to be certified for a unit of employees of the respondent, Tange Company Limited. On May 2nd, 1963, an order quashing the Board's decision was made by Chief Justice McRuer of the High Court.

Having regard to the order of the High Court, the Board finds that the applicant in this case is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act."

5959-63-R: International Union of Operating Engineers Local 793. (Applicant) v. Industrial Metal Company of Canada. (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman, office staff and persons covered by a subsisting collective agreement." (11 employees in the unit).

6108-63-R: United Electrical, Radio & Machine Workers of America (UE). (Applicant) v. Sargent Hardware of Canada Limited. (Respondent).

Unit: "all employees of the respondent at Peterborough, save and except foremen, supervisors, persons above the ranks of foreman or supervisor, office and sales staff." (41 employees in the unit).

6142-63-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Coca-Cola Ltd. (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, special salesmen and office staff." (68 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 158)

6148-63-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. MacDonald Cartage (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto, save and except owner-managers and office staff." (13 employees in the unit).

6150-63-R: The Lumber and Sawmill Workers' Union, Local 2995 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Antonio Guindon (Respondent).

Unit: "all employees of the respondent in his bush operations in the Township of Sankey and those Townships immediately adjacent thereto, save and except foremen, persons above the rank of foreman, office staff, scalers and tallymen." (30 employees in the unit).

6162-63-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC. (Applicant) v. Pepsi-Cola Canada Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except sales supervisors, route managers, foremen, persons above the rank of sales supervisor, route manager, foreman and office staff, salesmen other than driver salesman and persons covered under a subsisting collective agreement." (7 employees in the unit).

6164-63-R: General Truck Drivers, Local 879, International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers. (Applicant) v. Our Own Delivery Ltd. (Respondent).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman and office staff." (13 employees in the unit).

6180-63-R: International Hod Carriers Building and Common Labourers Union, Local #1089 (Applicant) v. Sandercock Construction Co. Ltd., (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6181-63-R: United Steelworkers of America. (Applicant) v. J. Harris & Sons Limited. (Respondent). v. International Union of Operating Engineers, Local 793 (Intervener) v. Teamsters Local Union 141 (Intervener).

Unit: "all employees of the respondent at its steel yard at London, save and except foremen, persons above the rank of foreman, truck drivers and office staff." (20 employees in the unit)."

(UNIT AGREED TO BY THE PARTIES).

6202-63-R: National Union of Public Employees (Applicant) v. The Salvation Army Grace Hospital (Respondent).

Unit: "all office and clerical employees of the respondent at Ottawa, save and except the administrator." (12 employees in the unit).

6213-63-R: United Brotherhood of Carpenters and Joiners of America Local Union 1758 (Applicant) v. Dick Vandenbelt (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Township of Elizabethtown in the County of Leeds and the Township of Augusta in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

The Board endorsed the Record in part as follows:

"The geographic area sought by the applicant appears to coincide with the area over which it has jurisdiction. However the applicant has not filed with the Board any evidence whatsoever indicating that it has collective agreements covering the area. In other words the applicant has not adduced any evidence to establish a pattern of bargaining for the area. While there are some collective agreements on file with the Board which to some extent correspond with the area claimed, there are others which show that the applicant also bargains for a lesser area eg. Brockville and six miles. In other cases before the Board involving other unions the Board has granted single Townships such as Elizabethtown or Augusta."

6220-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alcan-Colony Limited (Respondent).

Unit: "all employees of the respondent engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 159)

6221-63-R: International Union of Operating Engineers (Applicant) v. Mogens Hansen carrying on business under the firm name and style of Production Painting (Respondent).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman and office staff." (12 employees in the unit).

6225-63-R: United Brotherhood of Carpenters & Joiners of America, Millworkers Local # 202 (Applicant) v. Pyramid Mobile Homes (1959) Limited (Respondent).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman, office and sales staff." (64 employees in the unit).

6238-63-R: The United Brotherhood of Carpenters & Joiners of America, Local Union 1669 (Applicant) v. Walter Bergman Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

6243-63-R: United Electrical, Radio & Machine Workers of America (UE) (Applicant) v. J. H. Babcock & Sons Limited (Respondent).

Unit: "all employees of the respondent in the Township of Earnestown, save and except foremen, persons above the rank of foreman and office and sales staff." (43 employees in the unit).

6246-63-R: United Steelworkers of America (Applicant) v. Laughlin Steel Corporation (Respondent).

Unit: "all employees of the respondent in the Township of Boston, save and except assistant foremen, persons above the rank of assistant foreman, accounting, clerical and office employees, employees in the engineering and geological departments, laboratory staff, chief chemist, assistant chief chemists, security guards and students hired for the school vacation period." (22 employees in the unit).

(AGREEMENT OF THE PARTIES).

6261-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Silverwood Dairies Limited (Respondent).

Unit: "all office employees of the respondent at Windsor, save and except executive officers, accountant and assistant accountants." (5 employees in the unit).

(AGREEMENT OF THE PARTIES).

6281-63-R: United Steelworkers of America (Applicant) v. Welland Chemical of Canada Limited (Respondent).

Unit: "all employees of the respondent at Port Colborne, save and except foremen, persons above the rank of foreman and office staff." (13 employees in the unit).

6296-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Silverwood Dairies Limited (Respondent).

Unit: "all employees of the respondent employed at or working out of Lucknow, save and except foremen, persons above the rank of foreman, ice cream territory salesmen, sales managers, persons employed for not more than 24 hours per week, students hired for the school vacation period and office staff." (20 employees in the unit).

6297-63-R: Sheet Metal Workers' International Association, Local Union 269. (Applicant) v. Quinte Roofing Limited. (Respondent).

Unit: "all sheet metal workers, sheet metal apprentices and helpers in training in the employ of the respondent working at or out of Belleville, save and except non-working foreman." (4 employees in the unit).

6303-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC. (Applicant) v. Peninsula Beverage Vending Co. Ltd. (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (12 employees in the unit).

6304-63-R: Amalgamated Plant Guards, Local 1958, United Plant Guards Workers of America. (Applicant) v. Bendix Eclipse of Canada, Limited. (Respondent).

Unit: "all security guards in the employ of the respondent at Windsor." (5 employees in the unit).

6309-63-R: Brotherhood of Painters, Decorators and Paperhangers of America Local 1890. (Applicant) v. Gould-Leslie Limited. (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except supervisors, persons above the rank of supervisor, office and sales staff." (16 employees in the unit).

6313-63-R: United Brotherhood of Carpenters and Joiners of America Local 1758 (Applicant) v. A. O. Timm (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Township of Elizabethtown in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

The Board endorsed the Record in part as follows:

"For the reasons given by the Board in the Dick Vandenberg case, file number 6213-63-R, the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Township of Elizabethtown in the County of Leeds and the Township of Augusta in the County of Grenville, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6314-63-R: International Hod Carriers Building and Common Labourers Union, Local # 1089 (Applicant) v. Keystone Contractors Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lambton excluding Sarnia and Point Edward, save and except non-working foremen and persons above the rank of non-working foreman." (16 employees in the unit).

The Board endorsed the Record in part as follows:

"There is on file with the Board a subsisting collective agreement between the parties covering Sarnia and Point Edward. Therefore the Board further finds that all construction labourers in the employ of the respondent in the County of Lambton excluding Sarnia and Point Edward, save and except non-working foremen, and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6315-63-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local Union No. 230, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. (Applicant) v. Compact Ladder Company Limited. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (35 employees in the unit).

6320-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419, Warehousemen and Miscellaneous Drivers. (Applicant) v. National Grocers Company Limited. (Respondent).

Unit: "all employees of the respondent at Mimico, save and except foremen, persons above the rank of foreman, office and sales staff, and students hired for the school vacation period." (57 employees in the unit).

(UNIT AGREED TO BY THE PARTIES)

6321-63-R: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine, Mill and Smelter Workers. (Applicant) v. Ernie's Signs Limited. (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, office and sales staff." (7 employees in the unit).

6334-63-R: The National Union of Public Employees. (Applicant) v. Waterloo Lutheran University. (Respondent).

Unit: "all employees of the respondent in its Department of Buildings and Grounds at Waterloo, save and except foremen, persons above the rank of foreman and office staff." (18 employees in the unit).

6356-63-R: The Bricklayers', Masons' and Plasterers' International Union of America, Local No. 12 (Applicant) v. Hill & Glasser Limited (Respondent).

Unit: "all tile and terrazzo mechanics, marble masons, resilient floor layers and their helpers in the employ of the respondent at or out of Kitchener, save and except foremen and persons above the rank of foreman." (19 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant and respondent propose a description of the bargaining unit in terms of "all employees". In the Alvin Tile Company Limited case, file number 6050-63-R, (June, 1963) the Board at the request of the same applicant granted a unit in craft terms even though the collective agreement in force between Alvin Tile Company Limited and another union was in "all employee" terms. There appears to be little difference in the operations of the present respondent and Alvin Tile Company Limited. In these circumstances the Board further finds that

all tile and terrazzo mechanics, marble masons, resilient floor layers and their helpers in the employ of the respondent at or out of Kitchener, save and except foremen and persons above the rank of foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6397-63-R: International Hod Carriers Building and Common Labourers Union, Local # 493 (Applicant) v. Robertston-Yates Corporation Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Sault Ste. Marie and in the townships of Prince, Korah and Tarentorus and in the unorganized townships of Parke and Awenge and in the townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman."
(19 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

5124-62-R: Loblaw Workers' Council (Applicant) v. Discount Foods Limited (Respondent) v. Retail Clerks International Association (Intervener). (INTERVENER GRANTED). (APPLICANT DISMISSED).

Unit: "all employees of the respondent at its stores at Cataraqui, save and except store managers, persons above the rank of store manager, office staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period."
(48 employees in the unit).

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| Number of names on revised eligibility list | | 20 |
| Number of ballots cast | 19 | |
| Number of ballots marked in favour of applicant | 2 | |
| Number of ballots marked in favour of intervener | 17 | |

A hearing was held by the Board to inquire into allegations filed on behalf of the applicant.

Certified Subsequent to Post-Hearing Vote

5830-63-R: General Truck Drivers Local 879 International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. Stoney Creek Haulage Ltd. (Respondent).

Unit: "all employees of the respondent employed at or working out of Stoney Creek, save and except foremen, persons above the rank of foreman and office staff." (7 employees in the unit).

The Board endorsed the Record as follows:

"For the purposes of clarity the Board declares that employees of the respondent employed at the lands of the Steel Company of Canada at Hamilton are included in the bargaining unit."

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| Number of names on revised eligibility list | | 4 |
| Number of ballots cast | 4 | |
| Number of ballots marked in favour of applicant | 4 | |
| Number of ballots marked in favour of Stoney Creek Haulage Association Union | 0 | |

5848-63-R: District 50, United Mine Workers of America (Applicant) v. Stephens-Adamson Mfg. Co. of Canada Limited (Respondent).

Unit: "all employees of the Foundry Division of the respondent at Belleville, save and except foremen, persons above the rank of foreman, guards and office staff." (45 employees in the unit).

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| Number of names on revised eligibility list | | 41 |
| Number of ballots cast | 41 | |
| Number of ballots marked in favour of applicant | 39 | |
| Number of ballots marked in favour of Saco Collective Bargaining Union | 2 | |

5957-63-R: United Packinghouse, Food and Allied Workers, AFL-CIO-CLC. (Applicant) v. Tend-R-Flesh Limited. (Respondent).

Unit: "all employees of the respondent at Petersburg, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed for the school vacation period." (109 employees in the unit).

Certified Subsequent to Post-Hearing Vote

5925-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Nu-Style Construction Company (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

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| Number of names on revised eligibility list | | 9 |
| Number of ballots cast | 9 | |
| Number of ballots marked in favour of applicant | 1 | |
| Number of ballots marked as opposed to applicant | 8 | |

(SEE INDEXED ENDORSEMENT PAGE 157)

| | | |
|--|----|----|
| Number of names on revised eligibility list | | 96 |
| Number of ballots cast | | 96 |
| Number of ballots spoiled | 2 | |
| Number of ballots marked in favour of applicant | 53 | |
| Number of ballots marked as opposed to applicant | 41 | |

6050-63-R: The Bricklayers', Masons' and Plasterers' International Union of America, Local No. 12 Kitchener Ontario (Applicant) v. Alvin Tile Company Limited (Respondent) v. Local 421, United Rubber, Cork, Linoleum & Plastic Workers of America (Intervener).

Unit: "all employees of the company, employed through the company's Kitchener office, save and except foremen, persons above the rank of foreman and office staff." (25 employees in the unit).

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| Number of names on eligibility list | | 25 |
| Number of ballots cast | | 25 |
| Number of ballots marked in favour of applicant | 23 | |
| Number of ballots marked in favour of intervener | 2 | |

6058-63-R: Sudbury General Workers Union, Local 101, Canadian Labour Congress. (Applicant) v. Provincial Fruit Company. (Sudbury) Limited (Respondent).

Unit: "all employees of the respondent in Sudbury, save and except foremen, persons above the rank of foreman and office staff." (13 employees in the unit).

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| Number of names on revised eligibility list | | 11 |
| Number of ballots cast | | 11 |
| Number of ballots marked in favour of applicant | 7 | |
| Number of ballots marked as opposed to applicant | 4 | |

Certification Dismissed

5805-63-R: International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers Local 419 Warehouse and Miscellaneous Drivers. (Applicant) v. Globe Pipe Supply Ltd. (Respondent). (6 employees).

The Board endorsed the Record as follows:

"The applicant in its letter dated May 30th, 1963 advised the Board that it was withdrawing its application for certification in this matter.

Having regard to the representations of the respondent as contained in its letter dated June 5th, 1963 and the representations of the applicant as contained in its letter dated June 18th, 1963 and the circumstances of this case, the application for certification of the applicant is dismissed.

Should there be another application for certification by the applicant within the period of six months from the date hereof, affecting the employees of the respondent affected by this application, the Board will, at that time, entertain any representations the parties may wish to make with respect to the timeliness of that application.

The Board will not entertain the evidence of membership filed in this matter in any subsequent application made by the applicant."

5825-63-R: International Woodworkers of America (Applicant)
v. R.W. Beattie Furniture (Respondent). (13 employees).

The Board endorsed the Record as follows:

"The evidence adduced by the union indicates that applicants for membership were told and led to believe by the union's organizers at the membership meeting of March 25th, and later on April 4th when they were asked to and did countersign the receipts filed with the Board, that if the union were not successful in obtaining certification as their collective bargaining agent the initiation fees paid by them would be refunded.

As was said by the Board in the De Laval Co. Ltd. Case, (1952) C.C.H. Canadian Labour Law Reporter, 1949-54 Transf. Binder, ¶17,031,

The Board has stated on many occasions that a payment conditioned on the outcome of an application for certification

is not acceptable as evidence of membership in support of that application. Such a payment is not evidence of membership; at best, it is evidence of a willingness to become a member in a certain eventuality.

While in the circumstances we would give no weight to the document filed by the petitioners in opposition to the certification of the applicant, we are constrained to find that the union's evidence of membership fails to meet the requirements of the Board.

The application must be dismissed."

6065-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Pioneer Construction Co. Ltd. (Respondent) v. Northern Construction Workers Union (Intervener). (10 employees).

The Board endorsed the Record as follows:

"Although the applicant has requested leave to withdraw its application herein, the Board following its usual practice in such cases, dismisses the application."

6068-63-R: Guildline Employees Union. (Applicant) v. Guildline Instruments Limited. (Respondent). (49 employees).

6117-63-R: Warehousemen and Miscellaneous Drivers Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. (Applicant) v. Export Packers Company, Limited. (Respondent). (39 employees).

6161-63-R: The Canadian Union of Operating Engineers (Applicant) v. Lake Simcoe Ice & Enterprises Ltd. (Respondent). (21 employees).

(SEE INDEXED ENDORSEMENT PAGE 159)

6275-63-R: Methods, Wage Rate and Senior Cost Technicians' Association of Ontario, Local 166, American Federation of Technical Engineers, A.F.L. - C.I.O., C.L.C. (Applicant) v. John Inglis Co. Limited (Respondent) v. United Steelworkers of America (Intervener). (18 employees).

The Board endorsed the Record as follows:

"The applicant is applying for certification of a unit of pre-planners and estimators in the methods department of the respondent. There is a collective agreement in existence between the applicant and the intervener which is in effect until March 31st, 1965. This collective agreement covers all employees of the respondent with certain exceptions, one of the exceptions being "time study men." The applicant alleges that the unit of employees for which it is applying for certification falls within that exception.

The respondent alleges and it was not denied that since the respondent transferred its English Electric Division from St. Catharines to Toronto two years ago time study operations constitute only a small portion of the duties of the employees in the unit applied for by the applicant. The present duties of these employees are the same as those of approximately eighteen pre-planners and estimators in the adjoining engineering department of the respondent. The respondent and intervener allege that since the change in the nature of the duties and responsibilities of the employees claimed by the applicant, these employees no longer fall within the exception of "time study men." The pre-planners and estimators in the engineering department have been covered by a collective agreement between the applicant and intervener for some years. Since the pre-planners and estimators in the methods department now perform the same or similar functions, they were negotiated for and covered for the first time by the existing collective agreement. There is no evidence before us that they were included in the collective agreement in the shadow of an organizing campaign by the applicant.

The Board finds that the employees in the bargaining unit applied for by the applicant are covered by a subsisting collective agreement and therefore this application is untimely. Having regard to the foregoing finding, it is not necessary to make any finding with respect to the appropriateness of the bargaining unit applied for by the applicant.

The application, accordingly, is dismissed."

6280-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Canada Bread Company Limited. (Respondent).

The Board endorsed the Record as follows:

"The Board finds that there are no employees in the bargaining unit proposed by the applicant in this case and the application is therefore dismissed."

Applications for Certification Dismissed Subsequent to Pre-Hearing Vote

5088-62-R: United Electrical, Radio & Machine Workers of America (UE) (Applicant) v. Roberts-Gordon Appliance Corporation Limited (Respondent) v. Heating Appliance Workers Union (Intervener).

Voting Constituency: "all employees of the respondent at its plants in Grimsby, save and except foremen, persons above the rank of foreman, maintenance supervisor, salesmen and office staff."

(SEE INDEXED ENDORSEMENT PAGE 154)

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| Number of names on revised eligibility list | 40 |
| Number of ballots cast | 40 |
| Number of ballots marked in favour of applicant | 18 |
| Number of ballots marked as opposed to applicant | 22 |

The application for certification of the intervener was subsequently withdrawn - see File No. 5088A-63-R Roberts-Gordon Appliance Corporation Limited, O.L.R.B. Monthly Report, June 1963, page 140.

5643-62-R: The National Union of Public Employees (Applicant) v. The Corporation of the County of Lincoln (Respondent).

Voting Constituency: "all employees of the respondent in its road department in the County of Lincoln, save and except foremen, persons above the rank of foreman and office staff." (34 employees in the constituency).

| | |
|--|----|
| Number of names on revised eligibility list | 34 |
| Number of ballots cast | 34 |
| Number of ballots spoiled | 1 |
| Number of ballots marked in favour of applicant | 7 |
| Number of ballots marked as opposed to applicant | 26 |

Applications for Certification Dismissed Subsequent to
Post-Hearing Vote

5401-62-R: Retail Clerks International Association
(Applicant) v. Discount Foods Limited (Respondent) v. Loblaw
Workers' Council (Intervener). (INTERVENER CERTIFIED:
APPLICANT DISMISSED).

Unit: "all employees of the respondent at Galt, save and except store manager, meat manager, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (13 employees in the unit).

| | | |
|--|----|----|
| Number of names on revised eligibility list | | 12 |
| Number of ballots cast | 12 | |
| Number of ballots marked in favour of applicant | 0 | |
| Number of ballots marked in favour of intervener | 12 | |

5496-62-R: Retail Clerks International Association, (Applicant) v. Paragon Food Markets Limited (Respondent).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman, chief engineer, students employed during the school vacation period and office and sales staff." (23 employees in the unit)

| | | |
|--|----|----|
| Number of names on revised eligibility list | | 17 |
| Number of ballots cast | 17 | |
| Number of ballots segregated (not counted) | 1 | |
| Number of ballots marked in favour of applicant | 0 | |
| Number of ballots marked as opposed to applicant | 16 | |

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that persons classified by the respondent as lab assistant-utility are employees of the respondent included in the bargaining unit."

5680-62-R: General Truck Drivers, Local 879, International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. St. Catharines Fuel Oils Ltd. (Respondent).

Unit: "all employees of the respondent at St. Catharines, save and except foremen, those above the rank of foreman, dispatcher and office and sales staff." (18 employees in the unit).

| | | |
|--|----|----|
| Number of names on revised eligibility list | | 12 |
| Number of ballots cast | 12 | |
| Number of ballots spoiled | 1 | |
| Number of ballots marked in favour of applicant | 6 | |
| Number of ballots marked as opposed to applicant | 5 | |

5682-62-R: International Association of Machinists (Applicant) v. Bendal Machine Company Limited (Respondent).

Unit: "all employees of the respondent at Brampton, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (19 employees in the unit).

| | | |
|--|----|----|
| Number of names on revised eligibility list | | 16 |
| Number of ballots cast | 16 | |
| Number of ballots marked in favour of applicant | 8 | |
| Number of ballots marked as opposed to applicant | 8 | |

5755-62-R: Sudbury General Workers Union, Local 101, Canadian Labour Congress. (Applicant) v. Meredith-Connolly Motors Company Limited. (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except foremen, persons above the rank of foreman, car salesmen, service salesmen and office staff." (82 employees in the unit).

| | | |
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| Number of names on revised eligibility list | | 79 |
| Number of ballots cast | 79 | |
| Number of ballots marked in favour of applicant | 34 | |
| Number of ballots marked as opposed to applicant | 45 | |

5882-63-R: International Molders and Allied Workers Union
AFL.CIO.CLC. (Applicant) v. Reynolds Aluminum Containers
Limited (Respondent).

Unit: "all employees of the respondent at its plant in
Metropolitan Toronto, save and except foremen, persons above
the rank of foreman, office and sales staff." (14 employees
in the unit).

| | | |
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| Number of names on revised eligibility list | | 14 |
| Number of ballots cast | 10 | |
| Number of ballots segregated (not counted) | 1 | |
| Number of ballots marked in favour of applicant | 7 | |
| Number of ballots marked as opposed to applicant | 2 | |

5936-63-R: Sheet Metal Workers' International Association,
Local Union 304 (Applicant) v. C/S Construction Specialties
Limited (Respondent).

Unit: "all employees of the respondent at its plant in
the Township of Toronto, save and except foremen, persons
above the rank of foreman, office and sales staff and persons
regularly employed for not more than 24 hours per week."
(7 employees in the unit).

| | | |
|---|---|---|
| Number of names on revised eligibility list | | 5 |
| Number of ballots cast | 5 | |
| Number of ballots marked in favour of applicant | 0 | |
| Number of ballots marked as opposed to applicant | 5 | |

5947-63-R: Local #28, International Brotherhood of
Bookbinders, (Applicant) v. Recording & Statistical
Corporation Limited. (Respondent).

Unit: "all employees of the respondent at Toronto employed
on bindery and miscellaneous operations, save and except
non-working foremen, persons above the rank of non-working
foreman, office and sales staff." (23 employees in the unit).

| | | |
|---|----|----|
| Number of names on revised eligibility list | | 18 |
| Number of ballots cast | 18 | |
| Number of ballots marked in favour of applicant | 5 | |
| Number of ballots marked as opposed to applicant | 13 | |



APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE 1963

5088A-63-R: Heating Appliance Workers Union (Applicant) v. Roberts-Gordon Appliance Corporation Limited (Respondent).

5808-63-R: Ottawa Newspaper Guild, Local 205, American Newspaper Guild. (Applicant) v. United Press International News Pictures. (Respondent). (7 employees).

5932-63-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. D. H. I. Limited (Respondent). (16 employees).

6224-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. The Fallsway Hotel Ltd. (Fallsway Hotel project at Clifton Hill, Niagara Falls) (Respondent). (6 employees).

6242-63-R: Sheet Metal Workers' International Association, Local Union 537 (Applicant) v. Mazur Plumbing & Heating Limited (Respondent). (6 employees).

6294-63-R: International Hod Carriers Building and Common Labourers Union, Local # 1059. (Applicant) v. N.-J. Construction Co. (Respondent). (30 employees).

6295-63-R: International Hod Carriers Building and Common Labourers Union, Local #1059. (Applicant) v. N.-J. Spivak Ltd. (Respondent).

6347-63-R: International Chemical Workers Union. (Applicant) v. Union Gas Company of Canada, Limited. (Respondent). (32 employees).

6354-63-R: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine, Mill and Smelter Workers. (Applicant) v. Rayside Township. (Respondent). (7 employees).

6385-63-R: International Hod Carriers Building and Common Labourers Union, Local 527. (Applicant) v. Able Construction Company Limited. (Respondent). (11 employees).

10263-56: International Union of Operating Engineers, Local 796 (Applicant) v. Ontario Jockey Club Ltd. (New Woodbine) (Respondent). (4 employees).

10902-56: International Hod Carriers' Building and Common Labourers' Union of America Local 837 181 James St. N., Hamilton, Ont. (Applicant) v. Swansea Construction Co. Limited 363 Rogers Road, Toronto, Ont. (Respondent). (3 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING JUNE 1963

5639-62-R: Richard Edward Batey (Applicant) v. United Glass & Ceramic Workers of North America AFL-CIO-CLC (Respondent) v. Dominion Glass Company Limited (Intervener). (GRANTED). (70 employees).

(Re: Dominion Glass Company Limited,
Hamilton, Ontario.)

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|---|----|----|
| Number of names on revised eligibility list | | 65 |
| Number of ballots cast | 63 | |
| Number of ballots marked in favour of respondent | 11 | |
| Number of ballots marked as opposed to respondent | 52 | |

5658-63-R: John C. Bresett (Applicant) v. International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Respondent). (GRANTED). (71 employees).

(Re: Coca-Cola Limited,
Hamilton, Ontario)

5919-63-R: Don Rouse (Applicant) v. Welders Public Garage Employees Motor Mechanics and Allied Workers Local Union 847, affiliated with the International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers of America (Respondent) v. Braemar Motors Limited (Intervener). (GRANTED). (27 employees).

(Re: Braemar Motors Limited,
Toronto, Ontario)

| | | |
|---|----|----|
| Number of names on revised eligibility list | | 23 |
| Number of ballots cast | 23 | |
| Number of ballots marked in favour of respondent | 0 | |
| Number of ballots marked as opposed to respondent | 23 | |

5948-63-R: Ray Moorhouse and Walter Romaniuk (Applicant) v. Local 280 of the Hotel & Restaurant Employees' & Bartenders International Union A.F.L.-C.I.O.-C.L.C. (Respondent). (GRANTED).

(Re: Westover Hotel Ltd.,
Toronto, Ontario)

5955-63-R: Ray Moorhouse and Walter Romaniuk (Applicant) v. Local 280 of the Hotel & Restaurant Employees' & Bartenders International Union A.F.L.-C.I.O.-C.L.C. (Respondent). (GRANTED).

(Re: Westover Hotel Ltd.,
Toronto, Ontario)

(2 employees involved in the above applications).

The above matters are consolidated.

| | | |
|---|---|---|
| Number of names on revised eligibility list | | 2 |
| Number of ballots cast | 2 | |
| Number of ballots marked in favour of respondent | 0 | |
| Number of ballots marked as opposed to respondent | 2 | |

6214-63-R: Canada Dry Bottling Company (Kirkland Lake) Limited (Applicant) v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC (Respondent). (GRANTED). (7 employees).

(Re: Canada Dry Bottling Company (Kirkland Lake) Limited,
Kirkland Lake, Ontario)

6342-63-R: Giovanni Carpino (Applicant) v. United Steel Workers of America (Respondent). (DISMISSED). (52 employees).

(Re: Dayton Steel Foundry of Canada Ltd.,
Orillia, Ontario)

6361-63-R: United Flexible Metallic Tubing (Canada) Ltd. (Applicant) v. International Association of Machinists (Respondent). (GRANTED). (16 employees).

(Re: United Flexible Metallic Tubing (Canada) Ltd.,
Richmond Hill, Ontario)

The Board endorsed the Record as follows:

"The applicant having made an application to terminate the bargaining rights of the respondent, the respondent has advised the Board by its reply received June 17th, 1963 that it "will not dispute the termination of the bargaining rights nor will ...be in attendance at the hearing" and

by letter dated June 17th, 1963 that "we no longer claim to represent the employees of the United Flexible Metallic Tubing (Canada) Ltd." The Board therefore finds that the respondent has abandoned its bargaining rights and no longer represents the employees of United Flexible Metallic Tubing (Canada) Ltd. at Richmond Hill for whom it has heretofore been the bargaining agent."

9544-55: R. LeSarge, T. Marzo and P. Stancati (Applicant) v. Upholsterers International Union of North America, Local 30 (Respondent). (GRANTED). (118 employees).

(Re: Liberty Ornamental Iron Limited,
Toronto, Ontario)

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF
5833-63-R: Glaziers Local Union 1819 of the Brotherhood of Painters, Decorators and Paperhangers of America (Applicant) v. Canadian Pittsburgh Industries Ltd. (Oshawa) (Respondent) v. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Local 222 (Predecessor). (GRANTED).

The Board endorsed the Record in part as follows:

"The Board finds that the applicant is, by reason of transfer of jurisdiction, the successor to International Union, United Automobile Aircraft and Agricultural Implement Workers of America, Local 222."

APPLICATIONS UNDER SECTION 79 DISPOSED OF DURING JUNE 1963

5667-62-M: City of Peterborough (City Hall Employees) (Applicant) v. Local #126, National Union of Public Service Employees (Respondent).

The Board made findings as to the status of a number of persons.

APPLICATION FOR DETERMINATION UNDER SECTION 34(5) DISPOSED OF BY THE BOARD

5384-62-M: Hacquoil Construction Limited (Applicant) v. Local 1669 United Brotherhood of Carpenters & Joiners of America (Respondent).

The Board endorsed the Record as follows:

"The question referred to the Board under section 34(5) of The Labour Relations Act is whether or not there is an agreement on foot between The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (hereinafter referred to as "the union") and Hacquoil Construction Limited.

On June 24th, 1957, the union and McLeod Construction Company Limited entered into an agreement by which they agreed "to be bound by all terms and conditions contained in the current agreement between the Union and the General Contractors of the Lakehead Builders' Exchange, and as it may be changed from time to time by negotiation and agreement". On July 2nd, 1957, another document, addressed to the union, was signed on behalf of "Hacquoil's Construction Co." and on behalf of "McLeod Construction Co. Ltd." This document reads as follows:-

Please be advised that as of this 2nd day of July, 1957, the firm of Hacquoil's Construction Co. recognize agreement between McLeod Construction Co. Ltd., and the United Brotherhood of Carpenters and Joiners of America, Local Union 1669, signed the 24th day of June, 1957, as covering all projects of Hacquoil's Construction Co. in Northwestern Ontario.

On July 5th, 1957, a letter, on the letterhead of "Hacquoil's" and signed on behalf of "Hacquoil's", was forwarded to The United Brotherhood of Carpenters and Joiners of America. The letter reads as follows:-

Re: Westfort Hotels Limited,
McLeod Construction Co. Ltd.,
Hacquoil's Construction Co.

As requested and per your letter of June 28th, 1957, herewith enclosed are copies of letters and agreements re the above duly completed.

The letter of June 28th, 1957, referred to by Hacquoil's, is not in evidence before us, nor is there anything in writing signed on behalf of the union with respect to either the document of July 2nd or the letter of July 5th. Evidence was adduced on behalf of the union to show that, since 1957, in accordance with the terms of the "Exchange" agreement, it has supplied construction workers to "Hacquoil Construction", processed grievances with Hacquoil Construction Limited, and held meetings with Hacquoil Construction Limited in an effort to settle the subject matter of the current dispute between them.

The union submits that the documents of July 2nd and July 5th, 1957, addressed in each case to the union and signed respectively on behalf of "Hacquoil's Construction Co." and "Hacquoil's", constitute a collective agreement within the meaning of section 1(1)(c) of The Labour Relations Act and that, the union having dealt with an entity described only as "Hacquoil Construction", and Hacquoil Construction Limited having observed the terms of this agreement, the latter is estopped from taking the position that it is not a party to or bound by it. On behalf of Hacquoil Construction Limited, it is submitted that there is no collective agreement in writing between the union and either Hacquoil's or Hacquoil's Construction Co. or Hacquoil Construction Limited since the union has executed no document in respect of any of those entities and that estoppel does not create an agreement where none exists.

It has been the view of the Board that a collective agreement within the meaning of The Labour Relations Act means an agreement in writing executed or signed by the parties to the agreement. The Board, however, has also declared that there is no necessity for such an agreement to be contained in a formal agreement but that it may, for example, be found in proper circumstances in an exchange of correspondence between the parties. See the decision of the Board in the Canada Machinery Corporation Case, (1961) C.C.H. Canadian Labour Law Reporter, ¶16,194; C.L.S. 76-729. On the basis of the evidence before us, we find that, with respect to the documents of July 2nd and

July 5th, 1957, there is nothing in writing signed by the union to indicate that it was entering into a collective agreement with Hacquoil's or Hacquoil's Construction Co. Accordingly, we are of opinion that no collective agreement within the meaning of The Labour Relations Act was entered into between the union and Hacquoil's or between the union and Hacquoil's Construction Co. It follows, therefore, that we do not have to deal with the question of whether or not such an agreement would have been binding upon Hacquoil Construction Limited.

It has also been the view of the Board that a unilateral adoption of an agreement by a person not a party to it does not constitute a collective agreement within the meaning of The Labour Relations Act between such person and one or other of the parties to the collective agreement. See the Canada Machinery Corporation Limited Case, supra. As the Board said in the Foundation Company of Canada Case, (1957) C.C.H. Canadian Labour Law Reporter, 1955-1959 Transfer Binder, ¶16,078; C.L.S. 76-555, "there must be something more - something evidencing an agreement between that person and one of the parties to the existing agreement". As we have already stated, the Board requires such evidence to be in writing and to be executed or signed by the parties to the agreement. Accordingly, we are also of opinion that the mere observance of the provisions of the "McLeod" and "Exchange" agreements, whether by Hacquoil's or by Hacquoil's Construction Co. or by Hacquoil Construction Limited, does not constitute a collective agreement between the union and Hacquoil Construction Limited.

Our finding on the reference, therefore, is that there is no collective agreement on foot between the United Brotherhood of Carpenters and Joiners of America, Local Union 1669 and Hacquoil Construction Limited.

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED
OF DURING JUNE 1963

6244-63-R: The Steel Company of Canada, Limited Hamilton
Works (Applicant) v. G. Archer et al (Respondent).
(WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING
JUNE 1963

5998-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada
(Applicant) v. Ruston Construction. (Respondent). (GRANTED).

6005-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Di Pede Brothers. (Respondent). (GRANTED).

6010-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Thos. Di Cinto & Son. (Respondent). (GRANTED).

6012-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. John Cri. (Respondent). (GRANTED).

6013-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Con-Drain Co. Ltd. (Respondent). (GRANTED).

6015-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Gerard Ceci. (Respondent). (GRANTED).

6022-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Roseland Construction. (Respondent).(GRANTED).

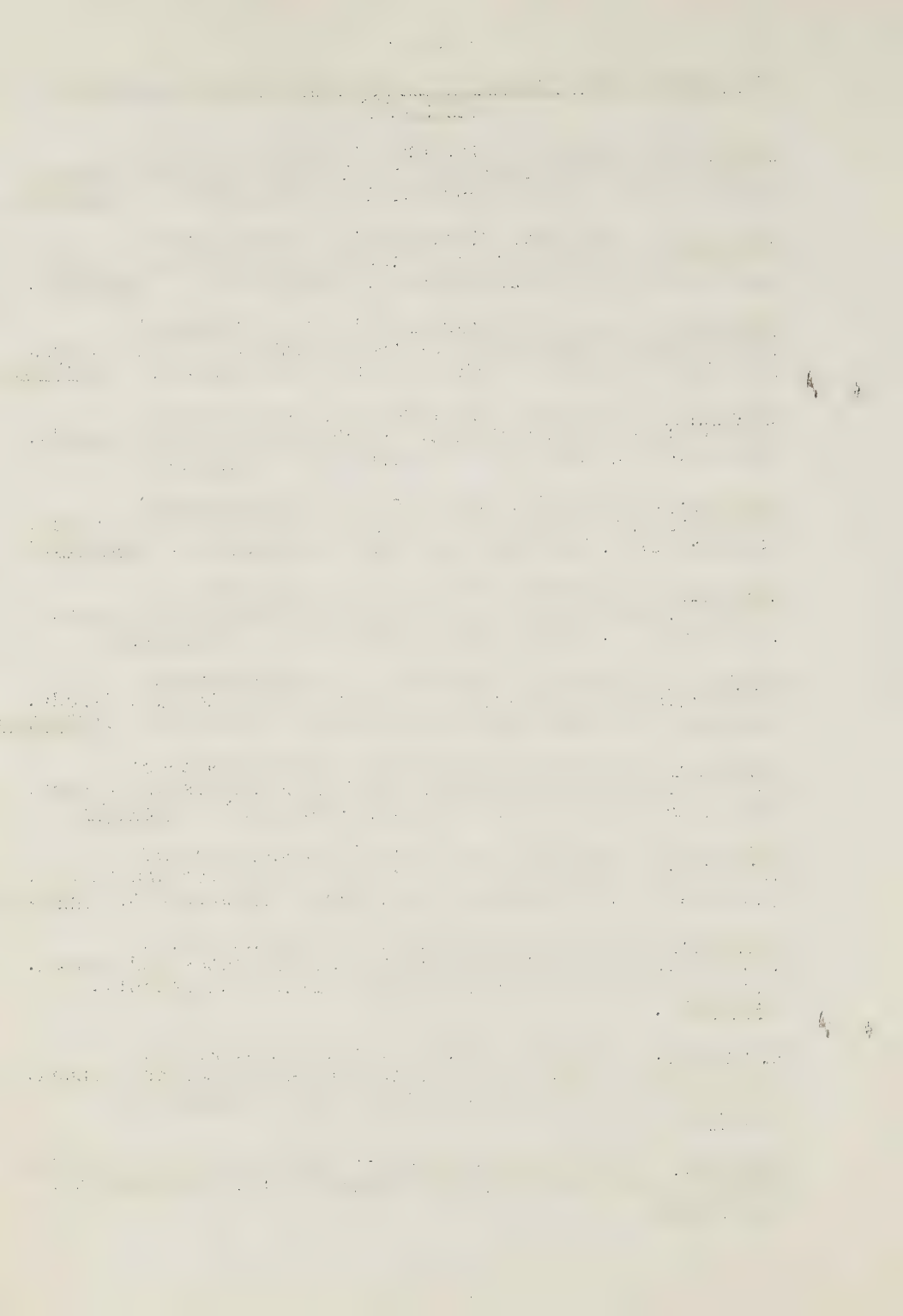
6024-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. N. Natale & Co. (Respondent). (GRANTED).

6031-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. De Pasquale & Di Santo. (Respondent).(GRANTED).

6042-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Guy Parone Construction. (Respondent).
(GRANTED).

6047-63-U: Operative Plasterers' & Cement Masons'
International Association of the United States and Canada.
(Applicant) v. Weston Concrete & Drain. (Respondent).
(GRANTED).

6240-63-U: United Brotherhood of Carpenters and Joiners of
America. (Applicant) v. A.G. Anderson Ltd. (Respondent).
(WITHDRAWN).



6335-63-U: Edward Brogden Limited. (Applicant) v. Local 530 of the International Brotherhood of Electrical Workers. (Respondent). (GRANTED).

6336-63-U: Edward Brogden Limited. (Applicant) v. Harold Hanki, et al (Respondents). (GRANTED).

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING JUNE 1963

5194-62-U: National Union of Public Service Employees (Complainant) v. Georgetown & District Memorial Hospital (Respondent).

(SEE INDEXED ENDORSEMENT PAGE 164)

5790-63-U: George Will (Complainant) v. Elliott-Marr Co. Ltd. (Respondent).

5890-63-U: Retail Clerks International Association (Complainant) v. Sentry Department Stores Limited (Cataraqui) (Respondent).

The Board endorsed the Record as follows:

"The complainant alleges that the aggrieved persons Keith Baxter and Norman Ferris were discharged by the respondent in contravention of section 50 of The Labour Relations Act.

With respect to Keith Baxter the respondent alleges (1) that he had managerial authority, and accordingly no remedy is available to him under section 65 of The Labour Relations Act and (2) that he was discharged for incompetency. We will deal first with the respondent's allegation that Baxter exercised managerial authority.

Baxter was assistant manager of the hardware department at the time of his discharge on April 3th, 1963. He was paid a weekly salary, did not receive overtime pay and was not required to punch a time clock. He was in charge of the department in the absence of Donald Burnett, the manager. He carried out the same job functions as other employees in the department but had supervisory authority over the other employees. The evidence of Burnett is that at the time he was promoted to assistant manager Baxter was told that he had authority to hire and fire

employees in the department. In February of this year at a meeting of the entire staff of the department Baxter was again informed in the presence of the employees that he had authority to hire and fire them. We have also the evidence of Baxter himself that at a meeting of managers he was informed that assistant department managers did have the authority to hire and fire. The evidence is not clear as to when this manager's meeting took place but it appears to have taken place some time early this year. Baxter stated that although he had been informed that he had authority to hire and fire employees, he did not in fact feel that he could do so and had never exercised this authority. Having regard to all the evidence relating to Baxter's duties and responsibilities, however, the Board finds that he did exercise managerial authority.

In the Associated Medical Services Incorporated case (1962 O.R. 1093 C.A.; C.C.H. Canadian Labour Law Reporter 715,452) Aylesworth, J.A., delivering the decision of the Court of Appeal, held that the term person in both section 50 and section 65 of The Labour Relations Act did not include someone who exercised managerial functions. Neither of these sections applied to anyone working in a managerial capacity since such a person was not deemed to be an employee within the meaning of the Act. Thus once the Board within its exclusive jurisdiction determined that the complainant (or the aggrieved person) was not an employee for the purposes of the Act, it ceased to have jurisdiction with respect to the complaint.

Having regard to the state of the law as it now appears to be, as expressed by the Appellate Division of the Supreme Court of Ontario in the above case, and having regard to our finding with respect to Baxter's status, the Board finds that it has no jurisdiction to consider this complaint as it relates to Baxter. We therefore are not required to make any finding with regard to the complainant's allegation that Baxter was discharged for his union activities contrary to section 50 of the Act.

The complaint with respect to the aggrieved person Keith Baxter accordingly is dismissed.

We now come to the complaint with respect to Norman Ferris. Ferris was hired as a stock clerk in the men's wear department of the respondent's store around the beginning of March 1963. There is no evidence, nor was there any allegation that his job performance was other than satisfactory during the six weeks he was in the employ of the respondent. Ferris attended a meeting called by the complainant union on April 7th and on that occasion he joined the union. During the following week he assisted the union in organizing the employees of the respondent. On the evidence before us we are satisfied that Cowper, the store manager, Gordon Hopper, the manager of the men's wear department and Wallace Hugall, the assistant manager of the men's wear department had knowledge of Ferris' attendance at the union meeting and his organizing activities on behalf of the union. Ferris was informed by Hugall late Saturday afternoon, April 13th that he was being laid-off effective that day because the department was cutting down on its overhead costs. Ferris alleges that he was, in fact, laid-off because of his union activities.

According to the testimony of Hopper wage costs had been running above the budget figures. It was decided to cut down on staff after the Easter trade to get wage percentage back in line with the gross sales volume. He admitted in cross-examination, however, that wage costs had been running over the budget at the time Ferris was hired. He also testified that business volume was lowest in the months of January, February and March. Although there may have been a business slump immediately after Easter, business volume picked up with the coming of the summer season. He estimated that the overall sales volume of the department increased by 10 per cent in April over March and probably another 10 per cent in May over April. At the time Ferris was laid-off no suggestion was made that he would be recalled when business improved. On May 6th, however, Hopper hired one Robin King who worked approximately 80 hours during a three week period in May. Also, Hopper stated that he had been considering laying off Ferris since mid-March. The final decision, however, was not made until April 9th or 10th.



In our opinion the reason offered by Hopper for the lay-off of Ferris is quite inconsistent with Hopper's subsequent testimony. He was hired at a time when business volume was low and when wage costs were already over the budget. If Hopper was justified in hiring him at that time we fail to understand why he felt it was necessary to dispense with his services in mid-April at a time when business volume had increased and when there was the expectation of even better business conditions. At the time Ferris was hired there was no suggestion that his employment was temporary. In fact some discussions occurred concerning promotion possibilities. Also he was a sales trainee on the floor which indicates that Hopper looked on Ferris as a permanent and potentially long-term employee. Nevertheless Hopper claims that he commenced discussions concerning Ferris' lay-off only two weeks after he was hired. The decision to make the lay-off, however, was only made on April 9th or 10th after management was aware of Ferris' union activities. No suggestion was made at the time of his lay-off that Ferris would be recalled. Three weeks later, however, Hopper hired one Robin King. Having regard to the above noted inconsistencies in Hopper's evidence we do not accept his statement that Ferris was laid-off in order to reduce the wage costs of the department.

Having regard to all the evidence, the Board is satisfied that Norman Ferris was laid-off or discharged for his union activities in contravention of section 50 of The Labour Relations Act.

At the time of his discharge Ferris was working a 42-hour week and earning 95 cents per hour. On the evidence we find that he made prompt and reasonable efforts to mitigate his loss of earnings by registering with the Unemployment Insurance Commission and seeking other employment. We are, however, taking into account the period during which Ferris was engaged in activities on behalf of the union in Sarnia. At the time of the hearing on June 6th, Ferris still had not been successful in obtaining any other employment elsewhere.



Our determination of the action to be taken by the respondent is as follows:-

- (1) The respondent shall forthwith reinstate and employ Norman Ferris to the same or like employment with the same wages and employment benefits as he had, and received, prior to and up to the time of his discharge on April 13th, 1963.
- (2) As compensation for his loss of wages and employment benefits from April 13th, 1963 to and including June 7th, 1963, the respondent shall forthwith pay Norman Ferris the sum of \$275.00.
- (3) The respondent and the complainant shall meet forthwith with a view to agreeing on the amount of loss of earnings and employment benefits, if any, now sustained or which may hereafter be sustained by Norman Ferris between the date of the hearing on June 7th, 1963, and the date of his actual re-employment by the respondent. In default of an agreement between the parties within 7 days after the release of this determination or within such further period as the parties may mutually agree upon, the amount of any such further compensation payable, if any, will be determined by the Board upon the motion of either party for a further hearing for that purpose."

Board Member E. Boyer, dissenting in part, said:

"I dissent with respect to the finding of the majority that Keith Baxter had managerial authority. Having regard to the inconsistent testimony of Burnett as to the alleged incompetency of Baxter, I attach little weight to his entire evidence. Even though Baxter testified himself that he was told that he had authority to hire and fire he also stated that

he did not feel he had such authority and he had never exercised it. Also, the fact that the store manager, the department manager and the operators of the hardware concession all exercise managerial functions over the small number of employees in the department causes me to doubt that Baxter had any effective managerial authority. I accordingly find that Keith Baxter did not exercise managerial authority. Having regard to all the evidence, I find that Baxter was discharged for his union activities contrary to section 50 of The Labour Relations Act.

I concur with the majority in their finding that Norman Ferris was discharged for his union activity contrary to section 50 of The Labour Relations Act and in their award of compensation."

5986-63-U: Hamilton General Workers Union Local 202, C.L.C. (Complainant) v. Parquet Flooring Company Limited. (Respondent).

6096-63-U: International Union United Automobile Aircraft and Agricultural Implement Workers of America (UAW) (Complainant) v. Jas. H. Matthews and Company (Canada) 1959 Ltd. (Respondent).

6149-63-U: Boot and Shoe Workers Union affiliated with the American Federation of Labour, The Congress of Industrial Organizations and the Canadian Labour Congress (Complainant) v. Emille Shoes Limited (Respondent).

6204-63-U: Canadian Brotherhood of Railway, Transport and General Workers. (Complainant) v. MacDonald Cartage. (Respondent).

6210-63-U: Warehousemen and Miscellaneous Drivers' Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. (Complainant) v. Export Packers Company Limited. (Respondent).

6239-63-U: United Brotherhood of Carpenters and Joiners of America. (Complainant) v. A.G. Anderson Ltd. (Respondent).

6248-63-U: Local 101, Sudbury General Workers Union, Canadian Labour Congress (Complainant) v. Zeller's Limited Store #45 (Respondent).

6300-63-U: District Lodge No. 78 of the International Association of Machinists (Complainant) v. Beaver Casting and Vending Supply Company (Respondent).

6317-63-U: International Woodworkers of America. (Complainant) v. Dominion Cellulose Ltd. (Respondent).

6319-63-U: The Sudbury and District General Workers' Union Local 902, of the International Union of Mine, Mill and Smelter Workers. (Complainant) v. the Nickel City Auto Supplies. (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

5088-62-R: United Electrical, Radio & Machine Workers of America (UE) (Applicant) v. Roberts-Gordon Appliance Corporation Limited (Respondent) v. Heating Appliance Workers Union (Intervener). (DISMISSED JUNE 1963).

On April 25, 1963 the Board endorsed the Record in part as follows:

"The applicant and the intervener have requested that a pre-hearing representation vote be taken.

The Board finds that the applicant is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act.

The Board finds that the intervener is a trade union within the meaning of section 1(1)(j) of The Labour Relations Act....

...The applicant applied to be certified as bargaining agent for employees of the respondent on December 12th, 1962.

The intervener came into existence as a trade union and took into membership employees of the respondent on December 17th, 1962.

The intervener filed an application for certification by intervener on December 20th (the terminal date in this matter).

By filing an "application for certification by intervener", the intervener joined in and became a party to certification proceeding which was already in progress before the Board and which was made by the applicant on December 12th, 1962. We are of opinion that the date of the

making of the application that instituted the proceeding before the Board is the date of making referred to in section 8 subsection 2 of The Labour Relations Act for all purposes in that proceeding whether for the purpose of the applicant's application or for the purpose of the intervener's application. See the Barlin-Scott Manufacturing Company Limited Case, Board File 2173-61-R, April 10th, 1962.

Since the intervener was not in existence on the date of the making of this application and since it did not have as members any of the employees of the respondent, it therefore appears to the Board on an examination of the records of the intervener and the records of the respondent that less than forty-five per cent of the employees of the respondent in the voting constituency hereinafter described were members of the intervener at the time the application was made.

The intervener's request that a pre-hearing representation vote be taken in this matter is therefore denied.

Pursuant to the provisions of section 77(3)(b) of the Act, the Board directs that further consideration of the application for certification by intervener be postponed until a final decision has been issued by the Board on the application for certification of the applicant and thereafter the Board will consider the subsequent application for certification made by the intervener subject to any final decision issued by the Board on the application for certification of the applicant."

Board Member D.B. Archer dissented and said:

"I dissent with respect to that finding of the majority that the intervener is a trade union because of many peculiar circumstances in this case and some questions that are not answered to my satisfaction. In view of this, I would have found that the intervener did not meet the standards required by the Board and therefore I would have found that the intervener is not a trade union within the meaning of the Act and I would dismiss its application."

Board Member H.F. Irwin dissented and said:

"I dissent. In all the circumstances of this case I would deny the requests of the applicant and the intervener that a pre-hearing representation vote be taken and I would re-list this matter for hearing."

On June 4th, 1963 the Board further endorsed the Record as follows:

"This application was made December 12th, 1962 and the terminal date fixed by the Registrar in this matter was December 20th, 1962.

The applicant objected to the pre-hearing representation vote directed by the Board on April 25th, 1963 in this matter and alleged that the Board erred in directing that "all employees of the respondent in the voting constituency on the 20th day of December, 1962 who have not voluntarily terminated their employment or who have not been discharged for cause between the 20th day of December 1962 and the date the vote is taken will be eligible to vote".

The applicant argued that the voters' list should have been fixed as of December 12th, 1962 rather than December 20th, 1962, and further argued that if the clause relating to the eligibility to vote had read "all employees of the respondent in the voting constituency on the 12th day of December, 1962 who have not voluntarily terminated their employment or who have not been discharged for cause between the 12th day of December, 1962 and the date the vote is taken will be eligible to vote", an additional 9 persons would have been eligible to vote because the 9 persons concerned were at work on December 12th, 1962 but were laid off on that date.

In order to be eligible to vote a person must be an employee in the voting constituency on both of two dates. The person must be an employee on the terminal date (December 20th, 1962) and must not cease to be an employee on the date the vote is taken. Expressed in another way, to be entitled to vote a person must be an employee in the voting constituency on the date the vote is taken and must also have been an employee on the terminal date.

The Board in fixing the terminal date as one of the dates to determine the eligibility of voters followed its usual practice which it has consistently followed in pre-hearing representation vote cases. It is significant to note that although the applicant now alleges that the Board was in error in following its usual practice in this respect, it did not complain about the Board's decision directing the vote until after the vote had been taken and the result of the vote became known to the applicant.

The voters' list in this case was in fact the list of employees of the respondent as of December 12th, 1962, and it contained the names of the 9 persons with whom we are here concerned. Although the respondent challenged the right of the 9 persons to vote, their names remained on the voters' list. Had any of these 9 persons presented themselves at the poll and requested a ballot, the returning officer, following the Board's usual practice would have permitted such persons to cast a segregated ballot and such segregated ballots would not be counted until the eligibility of the person to vote had been determined by the Board. The applicant in this case has had a great deal of experience in these matters and could be deemed to be aware of the Board's procedure in this respect.

However, in this case none of the 9 persons appeared at the poll or requested a ballot and it is therefore unnecessary for the Board to determine whether or not any of the 9 persons were employees of the respondent in the voting constituency on the date the vote was taken or on the terminal date.

The applicant's objections to the pre-hearing representation vote are accordingly dismissed."

5925-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Nu-Style Construction Company (Respondent). (GRANTED JUNE 1963).

The Board endorsed the Record in part as follows:

"In this application, a statement of desire signed by employees had been returned to the sender on the ground that it was mailed to the Board after the terminal date fixed for the application (see section 50 of the Board's Rules of Procedure). On May 1, 1963, the Board certified the applicant on the evidence then before it. Subsequently, counsel for a group of employees supplied information to the Board concerning the date of the mailing of the statement of objections referred to above. On May 21, 1963, the Board endorsed the Record as follows:

"There has now been filed with the Board a photostatic copy of a post office registration receipt number #901, bearing the date stamp of the Gatchell Sudbury post office. The date of registration is April 30, 1963. The receipt corresponds in all particulars to the date stamp on the envelope referred to in the Board's letter of May 10, 1963, which envelope contained a statement of desire allegedly signed by certain employees of the respondent. The terminal date set for this application was April 30, 1963.

There is thus clear prima facie evidence that the statement of desire was filed by the terminal date within the meaning of The Labour Relations Act and the Board's Rules of Procedure.

In these circumstances the Registrar is directed to list the matter for hearing. At the commencement of the hearing the Board will expect formal proof of the date of mailing of the statement of desire to be made."

6142-63-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Coca-Cola Ltd. (Respondent). (GRANTED JUNE 1963).

The Board endorsed the Record as follows:

"The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent employed for 24 hours or less per week were at the material times members of the applicant. Although these employees by themselves constitute an appropriate unit for collective bargaining, having regard to the small number of persons in this category, the Board is of the opinion that it is more appropriate to include them in the larger all-employee unit. The Board accordingly declares, for purposes of clarity, that persons regularly employed for 24 hours or less per week are included in the unit of employees found to be appropriate for collective bargaining in paragraph 3."

6161-63-R: The Canadian Union of Operating Engineers. (Applicant) v. Lake Simcoe Ice & Enterprises Ltd. (Respondent). (DISMISSED JUNE 1963).

The Board endorsed the Record as follows:

"This is an application for a pre-hearing representation vote. An examiner was appointed to confer with the parties, to examine the records of the applicant and respondent and to make the requisite arrangements in connection with the vote. After the examiner had met with the parties as directed, the representative of the applicant requested leave of the Board to withdraw its application. The Board is of opinion that the request should not be granted but that, having regard to the stage at which the request was made, the application should be dismissed and it is accordingly dismissed."

6220-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Alcan-Colony Limited (Respondent). (GRANTED JUNE, 1963).

The Board endorsed the Record in part as follows:

"Application for certification.

In its reply the respondent requested a hearing and in support of this request stated as follows:

That the Respondent is not certain of those members in the unit who have in fact consented to this Application for Certification and is of the opinion that the required documents have not been properly executed by the individuals involved in the unit and as such requests an opportunity of examining the representatives of the bargaining unit.

The Board duly considered the request and directed the Registrar to inform the respondent as follows:

(1) With respect to the first two lines of the reasons advanced in support of the request for a hearing, your attention is directed to section 83 of The Labour Relations Act. It is not the policy of the Board to release the names of persons who are members of a trade union except in exceptional circumstances.

(2) With respect to the last four lines of the reasons, it is not the policy of the Board to permit an examination of the representative of the bargaining unit. A party to a proceeding before the Board who alleges an offence under The Labour Relations Act, or some improper conduct or impropriety with respect to evidence of representation is required to particularize its charges. Your attention is directed to section 47 of the Board's Rules of Procedure. In addition such party is required to establish a prima facie case before being given the opportunity of examining (in this case) union officials or representatives. While there is an exception to this general policy, it is impossible to say from the general nature of your allegation whether it falls into this exception or not.

(3) In the light of the above, if you have further representations to make in connection with your request for a hearing, would you please have them in the hands of the Board on or before Thursday, June 6th, 1963.

The respondent made no further representations to the Board, did not file any further particulars or clarification of its position and did not seek any extension of time from June 6th, within which to do so.

The Board was thus left to deal with the request for a hearing on the basis of what is contained in the reply.

It should be pointed out that in certification cases in the construction industry the Board is not required to hold a hearing. (See section 75(9a) of The Labour Relations Act). It is for this reason that the forms used in construction industry cases contain provisions such as are to be found in paragraph 14 of the reply (Form 61). Paragraph 14 reads as follows:

"14. (1) The respondent consents to the application being disposed of by the Board without a hearing by the Board:

OR

(2) The respondent consents to the application being disposed of by the Board without a hearing by the Board and makes the following representations thereon (use additional pages if necessary):

OR

(3) The respondent requests a hearing of the application by the Board and undertakes to attend a hearing of the Board for this purpose. The respondent states in support of this request as follows (use additional pages if necessary):

It should be noted further that rule 75 of the Board's Rules of Procedure provides as follows:

75. Where a party requests a hearing of the

application by the Board, he shall set out in the application, reply or intervention, as the case may be, a concise statement of,

- (a) the material facts upon which he proposes to rely at the hearing;
- (b) the relief to which he claims to be entitled by reasons of such facts; and
- (c) the submissions he proposes to make in support of his claim for relief.

This section of the rules is quoted in full in paragraph 4 (under the heading "Notes and Comments") on page 3 of the reply form. It is obvious that the respondent in this case has not complied with section 75 of the Rules.

Be that as it may, where a party requests a hearing in a construction industry case, the Board usually grants the request if it appears to the Board that it would serve some useful purpose.

In the present case the Board informed the respondent in its letter of June 5, 1963, of certain policies and procedures of which the respondent appears to have been unaware. In the first place, except in exceptional circumstances, the fact that a person is or is not a member of a trade union is not revealed to an employer or other party to the proceeding. (See Section 83 of The Labour Relations Act). In a certification case outside the construction industry, where hearings are held in almost every case, the only information on membership that is revealed is the nature of the membership evidence filed, that is, whether it consists of application cards, dues books, receipts, etc., the number of persons for whom evidence of membership is filed and certain details about amounts paid, signatures and dates. The number of persons on the list of employees filed by the respondent is also revealed. If no hearing is held in a construction industry certification case, this information is revealed in the Board's decision. If any party has reason to believe that the Board has been misled or that an error has been made or that the facts are incorrect, it is always open to it to request reconsideration under section 79(1) of The Labour Relations Act.

Thus the mere fact that a party "is not certain of those members in the unit who have in fact consented to this application" is no ground in itself for holding a hearing.

The Board also informed the respondent in its letter of June 5th, that it was not its policy to require representatives of an applicant to make themselves available for examination by another party with respect to the documentary evidence of membership filed in support of the application. This follows from the fact that such representatives or, at all events, the persons immediately concerned with the organizational campaign, are not required to be present to give oral testimony respecting such documentary evidence, although of course a representative is required to be present to speak to such other issues as may arise including a reply, if any, to allegations which may be made respecting irregularities in the documentary membership evidence. The Board's practices and policies in this regard are discussed at some length in two recent decisions of the Board, The Remington Rand Limited Case, O.L.R.B. Monthly Report, March, 1963, p. 535; and Pigott Motors (1961) Limited, (1963) C.C.H. Canadian Labour Law Reporter, Vol. 1, ¶16,264, D.L.S. 76-903. There is thus no need to elaborate on these matters other, perhaps, than to point out that the documentary evidence of membership or of opposition to an application is subjected to a searching scrutiny by the Board including a comparison of signatures on such documentary evidence with specimen signatures of employees in the bargaining unit supplied by the employer from among his existing records.

Finally, with respect to the assertion by the respondent that it "is of the opinion that the required documents have not been properly executed ...", the Board informed the respondent that if it was alleging an offence under The Labour Relations Act or some improper conduct or impropriety then further particulars were required. As stated above, none have been received. As a result, the Board is at a loss to know what the respondent is alleging, if anything.

If the respondent is saying, for example, that the improper execution came about as a result of misrepresentation or undue influence, then it is for the respondent so to allege with sufficient particularity and, at a hearing, to prove its case in the ordinary manner. At such a hearing the evidence would be taken under oath and there would be full right of cross examination. On the other hand if the allegation amounts to a charge of forgery or that no money was paid towards initiation fees (non-pay) then the Board will investigate such charge immediately, and if it finds any substance to the charge, will hold a hearing to which it will summons all persons having any knowledge on the issues and at which all parties have a full opportunity to participate through examination, cross examination and the adducing of evidence relevant to the issue. (See Remington Rand Limited, supra.)

Although given an opportunity to do so the respondent failed to clarify its position within the time set by the Board and in these circumstances and having regard to all the above considerations, including the material before the Board, we are of the opinion that the respondent has not made out a case for a hearing.

SECTION 65 (UNFAIR LABOUR PRACTICES INDEXED ENDORSEMENT
5194-62-U: National Union of Public Service Employees
(Complainant) v. Georgetown & District Memorial Hospital
(Respondent).

The Board endorsed the Record as follows:

"As a preliminary objection to the Board's jurisdiction, the respondent contends that the allegation in the complaint that Mrs. Atkinson was discriminated against by her employer because of the union activities of her husband, cannot constitute a basis for a complaint under section 65. Counsel for the employer argues that there is nothing

in The Labour Relations Act to prevent the employer from discriminating against an employee simply because she is the wife of a member of a trade union.

We have given careful consideration to the allegations in the complaint and the reply and to the oral representations of the parties at the hearing and to their subsequent written statements as contained in the letters of the complainant of March 5th and 21st and of the respondent's letter of March 12th, 1963. In our view the Board's remedial jurisdiction under section 65 to redress and undo the effects of discriminatory treatment practised by an employer against an employee must, consistent with the language of the statute, receive such an interpretation as will best suppress the mischief and advance the remedy contemplated by the legislation. It is contended by counsel for the respondent that the legislation should be interpreted strictly. There are, however, certain important qualifications to the rule of strict interpretation.

The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that the sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the Legislature. The paramount object, in construing penal as well as other statutes, is to ascertain the legislative intent, and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the intention. They are, indeed, frequently taken in the widest

sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Lord Coke's words, to suppress the mischief and advance the remedy. (Maxwell, on the Interpretation of Statutes 9th ed. at pp. 279-280.)

Although . . . the Legislature is presumed to intend no alteration in the law beyond the immediate and specific purposes of the Act, these are considered as including all the incidents or consequences strictly resulting from the enactment . . . (Maxwell, *ibid* p. 355.)

It is said to be the duty of the Judge to make such construction of a statute as shall suppress the mischief and advance the remedy. Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible to it . . . (Maxwell, *ibid* pp. 70-71.)

The "mischief" rule of statutory interpretation as set forth in *Heydon's Case*, 76 E.R. 637, and as quoted with approval by Riddell, J., in Worthington v. Robbins, 56 O.L.R. 285 at p. 287, is,

That for the sure and true interpretation of all statutes . . . four things are to be discerned and considered:-

- 1st. What was the common law before the making of the Act?
- 2nd. What was the mischief and defect for which the common law did not provide?

3rd. What remedy the
Parliament has
resolved and
appointed to cure
the disease . . .

4th. The true reason of
the remedy.

Section 10 of The Interpretation Act, R.S.O.
1960 c. 191, states that,

Every Act shall be deemed to be
remedial whether its immediate
purport is to direct the doing of
anything that the Legislature deems
to be for the public good or to
prevent or punish the doing of any
thing that it deems to be contrary
to the public good, and shall
accordingly receive such fair, large
and liberal construction and inter-
pretation as will best ensure the
attainment of the object of the Act
according to its true intent,
meaning and spirit, R.S.O. 1950,
c. 184, s. 10.

While the original complaint is somewhat
deficient in particularity, we are not pre-
pared to hold, without hearing all the
evidence, in support of the allegations
therein, that the complaint does not fall
within the remedial jurisdiction of the Board
under section 65 of the Act.

For the foregoing reasons, we direct
that the hearing of this case proceed on the
basis of the allegations contained in the
original complaint."

Board Member, R.W. Teagle said:

I concur in the result of the majority
but I do not necessarily agree with their
reasons. In the circumstances of this
case I am not prepared to hold, without
hearing all the evidence, whether the
complainant is entitled to rely on section
65."

On June 20, 1963 the Board further endorsed the Record as follows:

"Mrs. Atkinson was at pains to insist that the duties and responsibilities performed by the head of the admitting department, to which position she erroneously believed she had been appointed, were no different from those performed by other department heads. It was also her evidence that the head of the other departments had the power to hire and fire. The evidence is uncontradicted that Mrs. Billington who was promoted to and who now occupies the position of head of the admitting department took an independent and responsible part in the hiring of a replacement for Mrs. Atkinson. While on our view of the evidence the Administrator, Mr. Gilhooley, at first considered the hospital too small to warrant the establishment of a separate admitting department, he later decided that because of the physical lay-out of the hospital he had no alternative but to continue the admitting department as a separate department with a separate head. It was at this time that he appointed Mrs. Billington to the position of head of the admitting department in preference to Mrs. Atkinson.

Having regard to all the circumstances of the case, including the foregoing facts, we are impelled to find that the position of head of the admitting department which has also been referred to as senior admitting clerk, involves the exercise of managerial authority.

The Ontario Court of Appeal in the Associated Medical Services Incorporated v. Ontario Labour Relations Board et al, [1962] O.R. 1093, has ruled that the type of discrimination practised by the hospital in this case is not contrary to The Labour Relations Act and, therefore, is not within the remedial authority of the Board to redress under the provisions of section 65 of the Act.

In the result the complaint must be dismissed."

Board Member G.R. Harvey dissented and said:

"I dissent. Administrator Gilhooley testified the classification in question was designated by him "senior admitting clerk" in a memo issued the day following his refusal to formalize and recognize the duties performed by Mrs. Atkinson as senior admitting clerk. There is no evidence to support the claim that this classification contains the authority to hire and fire. There is evidence to show that administrator Gilhooley, following the designation of such authority in the memo, did in fact retain this responsibility in himself by interviewing and deciding upon Mrs. Atkinson's replacement after he had Mrs. Billington screen the person he had instructed her to see. With only 2 employees in this section other than the senior admitting clerk, and in view of administrator Gilhooley's evidence that the hospital was too small to carry a separate admitting department, the classification of senior admitting clerk clearly does not in fact contain managerial responsibility that would exclude it from a bargaining unit. In any event the job senior admitting clerk did not contain the claimed authority to hire and fire on the date of the actual decision to deny Mrs. Atkinson the appointment.

The reason given her by Mr. Gilhooley for not appointing Mrs. Atkinson to the position was "that if the union is certified you would be closely related to a person who may very well be one a shop steward". Thus there was an admitted discriminatory act by the administrator.

Based on the foregoing I would direct the return of Mrs. Atkinson to employment as senior admitting clerk with payment of lost salary less any money earned in the period of interest."

CONCILIATION INDEXED ENDORSEMENTS

5887-63-C: Ontario Hydro Employees Union, NUPSE, CLC (Applicant) v. The Hydro Electric Power Commission of Ontario (Respondent). (DISMISSED JUNE 1963).

The Board endorsed the Record as follows:

"The applicant union has filed with the Board a request that conciliation services be made available to the parties in the mid-term of a collective agreement. The collective agreement presently in effect between the parties remains in effect until March 31, 1964, and from year to year thereafter, with notice of termination to be given "within a period of not more than two months, but not less than one month prior to the anniversary date", or notice of desire to amend to be given "not more than 90 days and not less than thirty days before the anniversary date" It is obvious that, at all times material to this application no notice could be, or was, given pursuant to either subsection 1 or subsection 2 of section 40 of The Labour Relations Act.

The position of the applicant is that the Board is bound to grant the request, notwithstanding the inability of the applicant to give notice at this time under section 40 of the Act. In support of his contention, counsel for the applicant submits that the phrases at the commencement of subsection 2 of section 13 must be read literally and disjunctively. On the facts, he submits that the Board should find, since there has been bargaining on each of 20 days without an agreement having been arrived at, that bargaining has reached a stale mate and no progress in bargaining is being made.

As counsel for the respondent points out, it is trite law that a statute must be read as a whole. The whole scheme of The Labour Relations Act is that conciliation is a step in the bargaining process for the making of a new agreement or the

renewal of an agreement, with or without modifications, that has, or is about to, "run its course". It is implicit in subsection 2 of section 13 of the Act, that the request for conciliation services should be granted after notice has been given under section 11 or section 40. If this were not so, there would be no need for a special provision, such as appears in subsection 3, to deal with a situation where there has been a failure to give notice; "failure" implies a default in the performance of something required to be done, i.e., in the situation under discussion the giving of notice under section 11 or section 40.

Having regard to these considerations, the application is untimely and is accordingly dismissed."

6241-63-C: Local Union 633 of the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CLC (Applicant) v. The Food Bin (Stores in the Toronto Area) (Respondent). (REFERRED JUNE 1963).

The Board endorsed the Record as follows:

"Clause 40 of the collective agreement between the applicant and the respondent reads as follows:

"This agreement shall remain in effect from May 1st, 1961 to May 1st, 1963, and shall continue in force from year to year unless either party, upon thirty (30) days' written notice to the other party prior to May 1st of any year, serves notice of intent to terminate or modify the agreement."

The respondent agrees that timely notice was given by the applicant on March 28th, 1963.

The respondent has refused to bargain with the applicant on the basis that he plans to sell his business. At the time of the hearing the respondent was the owner of the business. It is not disputed that the applicant has the bargaining rights for the employees of the respondent.

The Board, accordingly, grants the applicant's request that conciliation services be made available to the parties with respect to the employees of the respondent in the bargaining unit defined in the collective agreement between the parties effective May 1st, 1961.

The matter is referred to the Minister."

REQUEST TO AMEND THE NAME OF THE RESPONDENT DENIED.

5824-63-R: International Hod Carriers Building and Common Laborers' Union of America, Local 607 (Applicant) v. Alcan Colony Construction Company (District of Thunder Bay) (Respondent). (DENIED JUNE 1963).

The Board endorsed the Record as follows:

"A hearing was directed in this matter "to hear evidence and representations with respect to the request of the applicant trade union that the Board amend the name of the respondent in its certificate dated 19th April, 1963."

The original application was filed by the applicant's representative in Port Arthur, Mr. Flook, and the request for amendment was also made by him. At the hearing to consider the request for amendment the applicant was represented by a representative from Toronto, Mr. Forgie.

The latter did not call any evidence in support of the request. He stated that the applicant had described the respondent as Alcan Colony Construction Company because the Board had previously issued a certificate to another union in that name. While it is

true that a certificate was issued to another union respecting Alcan Colony Construction Company, there is no material evidence before the Board substantiating the claim that the applicant in the present case relied on that fact. Mr. Flook was not available to give evidence and his letter requesting the amendment did not so allege. The statement of Mr. Forgie at its very best constitutes hearsay evidence. Even if we were to accord it weight we would then have to assess it in the light of the hearsay statements made by counsel for Alcan-Colony Ltd., with respect to the names on the construction machinery and on the cheques. In relying on section 78 of The Labour Relations Act the onus is clearly on the applicant to satisfy the Board that the mistake was a bona fide one. The purpose of the hearing, as set out in the notice of hearing, was to receive evidence and representations. Without clear cut evidence of the surrounding circumstances we are unable to say whether the mistake which undoubtedly was made, was a bona fide one.

Assuming, but without deciding, that the Board has jurisdiction to entertain the request for amendment, in the circumstances outlined above, this request is denied."

SPECIAL ENDORSEMENTS IN CONCILIATION APPLICATIONS DISPOSED OF
BY THE BOARD

6198-63-C: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Abolins Construction Limited (Respondent). (DISMISSED JUNE 1963).

The Board endorsed the Record as follows:

"In support of its application for conciliation services, the applicant relies on a collective agreement between itself and the Lakehead Builders Exchange, effective the first day of April, 1962, which agreement remains in effect until the 31st day of March, 1964.

Article 2 of the said collective agreement reads in part as follows:

- "(a) The Employers recognize The United Brotherhood of Carpenters and Joiners of America, Local Union 1669, as the sole collective bargaining agent for all employees as defined in Paragraph (d) of this Article, in its employ, in all that part of Northwestern Ontario west of a line running through Pagwa and White River, Ontario.
- (b) The jurisdictional territory of this Agreement shall be the geographical district of Thunder Bay."

On page 1 of the collective agreement, the Lakehead Builders Exchange is described as "Acting as Agent for certain of its membership specified in Appendix 'A' attached hereto, each such member being hereinafter referred to as the 'EMPLOYER'." Included in Appendix "A" is the name Abolin's Const. Ltd., Box 1022, Dryden.

In its reply to the present application, the respondent states that it was not a member of the Lakehead Builders Exchange when the Exchange entered into any collective agreement with the Applicant. The respondent further says that it has at no time recognized the applicant as the sole collective bargaining agent for its employees.

The present application is with respect to the employees employed on a job in Dryden. In the application it is stated "the respondent refuses to sit and bargain with the applicant with a view of arriving at an agreement covering this job in Dryden". The applicant further alleges that it is bargaining for the renewal of the collective agreement between or binding upon the applicant and the respondent that was signed on the first day of April, 1962 that is, the collective agreement referred to above.

Assuming, but without in any way finding, that the respondent company is bound by the collective agreement dated April 1, 1962, the application does not, in the opinion of the Board, make out a prima facie case for a grant of conciliation services. Dryden is located in the District of Kenora. The collective agreement applies only to the District of Thunder Bay. The applicant cannot therefore claim to be bargaining for the renewal of this collective agreement. Whatever effect is to be given to Article 2(a) of the collective agreement, that article by itself is not sufficient in our opinion to found an application for conciliation services under section 93 of The Labour Relations Act. Any notice that was given is not a notice pursuant to either section 11 of section 40 of the Act. Moreover, that article does not by itself constitute a collective agreement within the meaning of section 1(1)(c) of The Labour Relations Act.

Accordingly, pursuant to the provisions of section 45 of the Board's Rules of Procedure, this application is dismissed."

6227-63-C: Frankel Steel Construction Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent).
(REFERRED JUNE 1963).

6228-63-C: Niagara Structural Steel Ltd. (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent).
(REFERRED JUNE 1963).

6229-63-C: Newman Structures' Steel Ltd. (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent).
(REFERRED JUNE 1963).

6230-63-C: Bridge & Tank Company of Canada Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent). (REFERRED JUNE 1963).

6231-63-C: Dominion Bridge Co. Ltd. (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent). (REFERRED JUNE 1963).

- and -

6232-63-C: York Steel Construction Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent). (REFERRED JUNE 1963).

- and -

6233-63-C: Standard Steel Construction Company, Division of United Steel Corporation Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736 (Respondent). (REFERRED JUNE 1963).

The Board endorsed each of the above matters as follows:

"Although the applicant has requested the Board to consolidate a number of applications currently before the Board, it has not been the Board's practice or policy to do so particularly where the bargaining rights of the parties flow from individual agreements. The Board notes that other locals of The International Association of Bridge, Structural and Ornamental Iron Workers have recently been granted conciliation with respect to some of the applicants in this present series of applications. The Board also notes the objection taken by the respondent trade union to consolidation.

The applicant's request that conciliation services be made available to the parties is granted with respect to the employees of the applicant in the bargaining unit defined in the collective agreement between the parties effective May 1, 1961."

6271-63-C: Sheet Metal Workers' International Association Local Union 568 (Applicant) v. W.E. Jocelyn Roofing & Sheet Metal Ltd. (Hamilton) (Respondent). (DISMISSED JUNE 1963).

- and -

6272-63-C: Sheet Metal Workers' International Association Local Union 568 (Applicant) v. Ross Sheet Metal & Roofing Co. Ltd. (Hamilton) (Respondent). (DISMISSED JUNE 1963).

The Board endorsed each of the above matters as follows:

The parties were informed by letter dated June 4, 1963 as follows:

- "(1) There is nothing before the Board to substantiate the applicant's claim to bargaining rights for employees of the Respondent. The earlier collective agreement was signed by W. E. Jocelyn and the present Respondent is a limited company.
- (2) In any event, conciliation services were granted to the Applicant and W. E. Jocelyn on June 14, 1961 and there being no new collective agreement entered into, a second grant of conciliation services cannot be made unless the application is brought under section 13a of The Labour Relations Act.
- (3) The Board intends to dismiss the application, unless on or before June 10th, the Applicant notifies the Board that it wishes to make further representations."

On June 11th, 1963 the Board further endorsed the Record as follows:

"In the Registrar's letter to the applicant of June 4th, 1963, it was stated:

- (2) The Board intends to dismiss the application, unless on or before June 10th, the Applicant notifies the Board that it wishes to make further representations.

Further representations not having been made to the Board on or before June 10th, 1963, this application is dismissed."

6292-63-C: International Hod Carriers' Building and Common Labourers Union Local # 506 (Applicant) v. Concrete Column Clamps Limited (Respondent). (DISMISSED JULY 1963).

The Board endorsed the Record as follows:

"Application for conciliation services:

The applicant relies on a collective agreement between itself and the respondent signed the 22nd of January, 1951 and effective until May 1, 1952. The agreement contains a clause providing that the agreement shall remain in force from year to year in the absence of notice within certain prescribed times.

The applicant claims that it has had a continuing relationship with the respondent and that from time to time at the respondent's request it has supplied the respondent with labourers. There is some evidence before the Board which would support the claim to this extent: that the applicant has been supplying labourers to some employer. The question that arises is what employer?

There appears to be another company, Concrete Column Clamps (1961) Ltd., operating out of the same address as that given to the Board by the applicant for the respondent. The Board has been informed by an official of this other company that the present respondent has not operated in the Toronto area for two years and that the labourers supplied by the applicant in the last two years worked for Concrete Column Clamps (1961) Ltd.

In these circumstances and having regard to the length of time which has elapsed since the parties last signed a collective agreement, we are far from satisfied that the applicant has established its claim to bargaining rights for employees of the present respondent.

The application is therefore dismissed but, in all the circumstances, without prejudice to the applicant filing a new application on the basis of any additional evidence which may come to light."

TRUSTEESHIP REPORTS FILED

- T.13-60: Canadian Labour Congress Local 202,
Hamilton General Workers, at Hamilton,
Report filed under date of June 27, 1963
by Harry Simon, Regional Director of
Organization for Ontario stated that
trusteeship of Local 202, Canadian Labour
Congress, Hamilton has now been lifted.
- T.15-61: United Garment Workers of America, Local
253 at Toronto. Report filed under date
of June 24, 1963 by B. Whyte, International
Representative which stated that trusteeship
of Local #253 of United Garment Workers of
America was lifted as of October 29, 1961
and that all officers of the executive were
filled by election and the Local returned
local autonomy.

PART 2

| | |
|---|-----|
| 1. Applications and Complaints to the Ontario Labour Relations Board | S11 |
| 2. Hearings of the Ontario Labour Relations Board | S11 |
| 3. Applications and Complaints disposed of by the Ontario Labour Relations Board by Major Types | S12 |
| 4. Applications Disposed of by the Ontario Labour Relations Board by Types and by Disposition | S13 |
| 5. Representation Votes in Certification Applications Disposed of by the Board | S15 |
| 6. Representation Votes in Termination Applications Disposed of by the Board | S15 |

TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

| | Number of applications filed | | |
|--|------------------------------|----------------|----------------------|
| | June 1st 1963 | 4 months 63-64 | of fiscal year 62-63 |
| I Certification | 64 | 185 | 226 |
| II Declaration Terminating Bargaining Rights | 9 | 25 | 15 |
| III Declaration of Successor Status | - | 1 | 2 |
| IV Conciliation Services | 98 | 374 | 406 |
| V Declaration that Strike Unlawful | 3 | 6 | 22 |
| VI Declaration that Lockout Unlawful | - | - | 3 |
| VII Consent to Prosecute | 5 | 69 | 35 |
| VIII Complaint of Unfair Practice in Employment (Section 65) | 10 | 38 | 42 |
| IX Miscellaneous | <u>1</u> | <u>2</u> | <u>7</u> |
| TOTAL | <u>190</u> | <u>700</u> | <u>758</u> |

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

| | Number | | |
|--|---------------|----------------|----------------------|
| | June 1st 1963 | 4 months 63-64 | of fiscal year 62-63 |
| Hearings & Continuation of Hearings by the Board | 93 | 279 | 354 |

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

| | Number of applications disposed of June 1st 4 months of fiscal year | | |
|--|--|--------------|--------------|
| | <u>1963</u> | <u>63-64</u> | <u>62-63</u> |
| I Certification | 73 | 220 | 235 |
| II Declaration Terminating Bargaining Rights | 9 | 36 | 23 |
| III Declaration of Successor Status | 1 | 2 | - |
| IV Conciliation Services | 116 | 393 | 407 |
| V Declaration that Strike Unlawful | 1 | 3 | 13 |
| VI Declaration that Lockout Unlawful | - | - | 3 |
| VII Consent to Prosecute | 14 | 64 | 25 |
| VIII Complaint of Unfair Practice in Employment (Section 65) | 13 | 42 | 30 |
| IX Miscellaneous | <u>2</u> | <u>2</u> | <u>2</u> |
| TOTAL | <u>229</u> | <u>762</u> | <u>738</u> |

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPES AND BY DISPOSITION

| Disposition | June 1st 4 mos.fiscal yr. | | | *Employees | | |
|--|---------------------------|--------------|--------------|-------------|--------------|--------------|
| | <u>'63</u> | <u>63-64</u> | <u>62-63</u> | <u>'63</u> | <u>63-64</u> | <u>62-63</u> |
| <u>I Certification</u> | | | | | | |
| Granted | 42 | 153 | 160 | 1038 | 4965 | 4267 |
| Dismissed | 19 | 41 | 48 | 526 | 1255 | 2781 |
| Withdrawn | <u>12</u> | <u>26</u> | <u>27</u> | <u>122</u> | <u>323</u> | <u>504</u> |
| TOTAL | <u>73</u> | <u>220</u> | <u>235</u> | <u>1686</u> | <u>6543</u> | <u>7552</u> |
| <u>II Termination of Bargaining Rights</u> | | | | | | |
| Terminated | 7 | 27 | 18 | 240 | 686 | 440 |
| Dismissed | 2 | 9 | 4 | 123 | 384 | 104 |
| Withdrawn | <u>-</u> | <u>-</u> | <u>1</u> | <u>-</u> | <u>-</u> | <u>52</u> |
| TOTAL | <u>9</u> | <u>36</u> | <u>23</u> | <u>363</u> | <u>1070</u> | <u>596</u> |

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Bc'rd. Totals for applications dismissed and withdrawn are approximate.

-S14 - APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'ns disposed of
June 1st 4 mos. fiscal year.
1963 63-64 62-63

III Conciliation Services*

| | | | |
|-----------|------------|------------|------------|
| Referred | 111 | 377 | 366 |
| Dismissed | 4 | 7 | 4 |
| Withdrawn | <u>1</u> | <u>9</u> | <u>37</u> |
| TOTAL | <u>116</u> | <u>393</u> | <u>407</u> |

IV Declaration that
Strike Unlawful

| | | | |
|-----------|----------|----------|-----------|
| Granted | - | - | 1 |
| Dismissed | - | - | 4 |
| Withdrawn | <u>1</u> | <u>3</u> | <u>8</u> |
| TOTAL | <u>1</u> | <u>3</u> | <u>13</u> |

V Declaration that
Lockout Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | - |
| Dismissed | - | - | 3 |
| Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL | <u>-</u> | <u>-</u> | <u>3</u> |

VI Consent to
Prosecute

| | | | |
|-----------|-----------|-----------|-----------|
| Granted | 13 | 17 | 9 |
| Dismissed | - | 2 | 3 |
| Withdrawn | <u>1</u> | <u>45</u> | <u>13</u> |
| TOTAL | <u>14</u> | <u>64</u> | <u>25</u> |

*Includes applications for conciliation services re unions claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number of Votes | | |
|----------------------------------|-----------------|--------------|-------------------|
| | June 1st 1963 | 4 mos. 63-64 | fiscal year 62-63 |
| <u>*Certification After Vote</u> | | | |
| pre-hearing vote | 1 | 6 | 11 |
| post-hearing vote | 6 | 22 | 7 |
| ballots not counted | - | - | - |
| <u>Dismissed After Vote</u> | | | |
| pre-hearing vote | 2 | 5 | 7 |
| post-hearing vote | 9 | 20 | 17 |
| ballots not counted | - | 1 | - |
| TOTAL | <u>18</u> | <u>54</u> | <u>42</u> |

*Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE BOARD

| | Number | | |
|-------------------------------|---------------|--------------|-------------------|
| | June 1st 1963 | 4 mos. 63-64 | fiscal year 62-63 |
| *Respondent Union Successful | 1 | 5 | 4 |
| Respondent Union Unsuccessful | <u>3</u> | <u>13</u> | <u>4</u> |
| TOTAL | <u>4</u> | <u>18</u> | <u>8</u> |

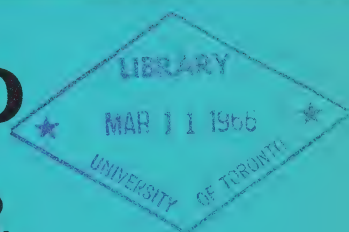
*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



JULY 1963

ONTARIO LABOUR RELATIONS BOARD



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING JULY 1963

Bargaining Agents Certified During July
No Vote Conducted

5547-62-R: Bakery and Confectionery Workers' International Union of America-Factory Bakers Union, Local 264 (Applicant) v. Inter City Baking Company Limited (Browns Bread Division) (Respondent).

- Unit: (a) "all employees of the respondent employed at its depots in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff, driver salesmen, transport drivers, special delivery employees, persons regularly employed for not more than 24 hours per week, students hired for the school vacation period and persons bound by a subsisting collective agreement between the parties with respect to the employees of the respondent at its Eastern Avenue depot." (APPLICANT CERTIFIED) (8 employees in the unit).
- (b) "all employees of the respondent at its depot in Thornhill, save and except foremen, persons above the rank of foreman, office staff, driver salesmen, transport drivers, special delivery employees, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (APPLICANT CERTIFIED) (3 employees in the unit).
- (c) "all employees of the respondent at its depot in Oakville, save and except foremen, persons above the rank of foreman, office staff, driver salesmen, transport drivers, special delivery employees, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (APPLICANT DISMISSED). (1 employee in the unit).

The applicant union had sought certification as bargaining agent for one bargaining unit comprising the employees of 4 depots of the respondent company (Mimico, Weston, Thornhill and Oakville). On the basis of all the evidence before the Board and having regard to the representations of the parties, the Board found that the employees affected by the application constituted three separate bargaining units, as indicated above.

In respect of the Metropolitan Toronto unit, the majority of the Board declared that J. Coxhead did not exercise managerial functions, Board Member M. C. Hay dissented and stated he would have found that J. Coxhead does exercise managerial functions.

5928-63-R: Food Handlers' Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. George L. J. Trottier, carrying on business under the firm name and style of Delhi I.G.A. Food Market (Respondent).

Unit: "all employees of the respondent carrying on business under the firm name and style of Delhi I.G.A. Food Market at Delhi save and except store manager, persons above the rank of store manager, meat department employees, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (9 employees in the unit).

6167-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Construction Equipment Company Limited (Respondent).

Unit: "all employees of the respondent working at or out of Toronto, save and except non-working foremen, persons above the rank of non-working foreman, sales technicians, office staff, cooks, salesmen, clerks, parts department clerks and shippers." (41 employees in the unit).

(AGREEMENT OF THE PARTIES).

6203-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Cargo Dockers Limited (Oshawa Ont.) (Respondent).

Unit: "all employees of the respondent at Oshawa, save and except foremen, persons above the rank of foreman and office staff." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"On the basis of the evidence contained in the examiner's report, we find that Leo LeBlanc does not exercise managerial functions and is therefore included in the bargaining unit, but that John R. Lalonde who was designated by the respondent as a superintendent does exercise managerial functions and is accordingly excluded from the bargaining unit."

Board Member H. F. Irwin dissented and said:

"I dissent. On the basis of the evidence contained in the examiner's report I find that John R. Lalonde and Leo LeBlanc do not exercise managerial functions. In the result I would have included both John R. Lalonde and Leo LeBlanc in the bargaining unit and would have directed the taking of a representation vote. On the basis of the majority

decision there are two (2) foremen (Lalonde and Tunstall) supervising the work of the three (3) employees in the bargaining unit. This is most unrealistic and impractical."

6263-63-R: International Association of Machinists Local Lodge No. 235 (Applicant) v. Toledo Scale Company of Canada, Limited (Respondent).

Unit: "all service mechanics and apprentice servicemen employed by the respondent at St. Catharines." (4 employees in the unit).

6264-63-R: International Association of Machinists Local Lodge No. 235 (Applicant) v. Toledo Scale Company of Canada, Limited (Respondent).

Unit: "all service mechanics and apprentice servicemen employed by the respondent at Hamilton." (5 employees in the unit).

6308-63-R: United Packinghouse, Food and Allied Workers, AFL-CIO-CLC (Applicant) v. Cook Chocolate Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Campbellford, save and except foremen, persons above the rank of foreman, office and sales staff." (23 employees in the unit).

The Board endorsed the Record in part as follows:

"The respondent alleges that on Wednesday, June 12th, 1963 at about 2:30 in the afternoon, George Fry, an employee of the respondent, stated to five female factory employees in the plant cafeteria that if any of them withdrew their support of the applicant's application for certification, they would be physically harmed.

The evidence of Evelyn Green, an employee of the respondent, is that at the coffee break on the afternoon of June 12th, she was sitting at a table in the cafeteria with four fellow employees, namely Jennie Anderson, Lavernne Hollings, Gwen Sherwin and Eleanor Petherick. A number of male employees were seated at another table. One of the men sitting at the latter table was George Fry. Evelyn Green's testimony is that while remaining seated at the table, Fry addressed her and the above-named employees in words to the effect that 'if any of you open your mouth you will be taken out behind the factory and given a beating'. The best estimate of the distance

between the two tables is approximately fifteen feet. The evidence of the above-named persons who were seated at the same table as Evelyn Green is that none of them heard Fry make the statement which Evelyn Green attributes to him. Indeed, Jennie Anderson and Lavernne Hollings had no recollection as to whether Fry was even in the cafeteria at the time the statement was purported to have been made.

We have also the evidence of Robert Prescott, a part-time organizer for the applicant union who organized the employees of the respondent company. Prescott's uncontradicted testimony is that he signed up and collected initiation fees from sixteen of the seventeen employees for whom membership cards were submitted to the Board in support of this application. (His testimony is in accord with the evidence of membership which is before the Board.) Prescott further stated that Fry was at no time and in no way a representative or organizer on behalf of the applicant union. Prescott did not ask Fry to assist in signing up employees and he did not give him any application for membership cards or a receipt book.

Having regard to the distance between the two tables and the fact that the five female employees were seated at the same table within feet of one another, we find it difficult to believe that Fry's statement would only be heard by Evelyn Green. In the light of the conflict in the testimony of Evelyn Green and the testimony of her four fellow employees, the Board can attach little weight to her evidence. Even assuming that the Board did accept her testimony, there is no evidence before us as to the circumstances in which the statement attributed to Fry was made or to what it relates.

Having regard to all the evidence before us, the Board finds that none of the five named female employees of the respondent were in any way intimidated or coerced into supporting or continuing to support the applicant trade union.

Having made the above finding, it is not necessary for the Board to make a further finding with respect to the status of George Fry in relation to the applicant union. We would point out, however, that the Board distinguishes between the actions of union officials and representatives and those of rank and file members. Where a union official or representative commits a single improper act, it may be sufficient

to cast doubt on all the evidence of membership and warrant the outright dismissal of an application for certification. Where a rank and file member is guilty of such an act, however, the weight to be given to the remaining evidence of membership will depend on all the circumstances of the case. (See Linhaven Home for the Aged Case, O.L.R.B. Monthly Report, May 1962, p. 66, and Webster Air Equipment Case, C.C.H. Canadian Labour Law Reporter, Transfer Binder '55-'59, ¶16,110, C.L.S. 76-598.)

The charges of the applicant are accordingly dismissed."

6358-63-R: Textile Workers Union of America, AFL-CIO-CLC (Applicant) v. Coroplastics Canada Limited (Respondent).

Unit: "all employees of the respondent at Ajax, save and except foremen, persons above the rank of foreman and office and sales staff." (16 employees in the unit).

6363-63-R: International Union of Electrical, Radio & Machine Workers (Applicant) v. Sprague TCC (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent at Walkerton, save and except foremen, persons above the rank of foreman and office staff." (29 employees in the unit).

6364-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Hazel Bishop of Canada Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (20 employees in the unit).

6370-63-R: The United Brotherhood of Carpenters and Joiners of America Local Union 1669 (Applicant) v. McNamara Construction of Ontario Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Rainy River, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

6381-63-R: Bricklayers Masons and Plasterers International Union of America, Local 40 Ontario (Applicant) v. Mediterranean Contracting Co. (Respondent).

Unit: "all bricklayers in the employ of the respondent employed within a radius of twenty-five miles from the Toronto City Hall and including the town of Newmarket, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purpose of clarity, the Board notes that Renzo Falcetti and Giovanni Panettieri are employees of the respondent included in the bargaining unit, and that Giovanni Tocco is an employee of the respondent not included in the bargaining unit."

Board Member, R. W. Teagle dissented and said:

"I dissent, in that I would have included Giovanni Tocco in the bargaining unit. Since this would mean 17 persons in the bargaining unit I would have directed a representation vote."

6400-63-R: Hamilton Printing Pressmen & Assistants' Union No. 176 (Applicant) v. Griffin & Richmond Company Limited (Respondent).

Unit: "all pressmen, pressmen's assistants and their apprentices in the employ of the respondent at Hamilton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6405-63-R: United Steelworkers of America, (Applicant) v. R. A. Jones carrying on business under the firm name and style of Madoc Marble Quarries Co. (Respondent).

Unit: "all employees of the respondent at its quarries and mill at Madoc, save and except foremen, persons above the rank of foreman, office staff and students hired for the school vacation period." (12 employees in the unit).

6417-63-R: International Union of Operating Engineers, Local 793, (Applicant) v. Cecchetto & Sons Ltd. (Respondent).

Unit: "all mechanics and mechanics' helpers employed by the respondent at Sudbury, save and except master mechanic and persons above the rank of master mechanic." (6 employees in the unit).

6418-63-R: Amalgamated Lithographers' of America, Local 42 (Applicant) v. Bean Printing & Publishing Co. Ltd. (Respondent).

Unit: "all lithographers, their apprentices and helpers in the employ of the respondent at Waterloo, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

6419-63-R: Canadian Transportation Workers' Union No. 181, N.C.C.L. (Applicant) v. Haggarty Transport Limited (Respondent).

Unit: "all employees of the respondent employed at or working out of Wooler, save and except foremen, persons above the rank of foreman and office staff." (11 employees in the unit).

6420-63-R: Canadian Transportation Workers' Union No. 181, N.C.C.L. (Applicant) v. Lafferty-Smith Limited (Respondent).

Unit: "all employees of the respondent employed at or working out of Belleville or Trenton, save and except foremen, persons above the rank of foreman and office staff." (15 employees in the unit).

6429-63-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 938 General Truck Drivers (Applicant) v. Peel Express (Respondent).

Unit: "all employees of the respondent in the Township of Chinguacousy, save and except foremen, persons above the rank of foreman, dispatchers, office and sales staff and students employed for the school vacation period." (18 employees in the unit).

6440-63-R: United Steelworkers of America (Applicant) v. Heywood-Wakefield Company of Canada Limited (Respondent).

Unit: "all employees of the respondent at Orillia, save and except foremen, those above the rank of foreman, timekeepers, office and sales staff." (127 employees in the unit).

(AGREEMENT OF THE PARTIES)

6445-63-P: North Bay General Workers Union, Local 1603, Canadian Labour Congress (Applicant) v. North Bay Construction Products Limited (Respondent).

Unit: "all employees of the respondent in the Township of Widdifield, save and except foremen, persons above the rank of foreman and office staff." (12 employees in the unit).

6450-63-R: General Truck Drivers Local 879 International Brotherhood of Teamsters Chauffeurs Warehousemen and Helpers (Applicant) v. H. Boehmer & Co., Limited (Respondent).

Unit: "all employees of the respondent at Georgetown, save and except foremen, persons above the rank of foreman, office and sales staff." (3 employees in the unit).

6463-63-R: Local 280 of the Hotel & Restaurant Employee's and Bartender's International Union. A.F.L. - C.I.O. - C.L.C. (Applicant) v. Executive Motor Hotel Limited (Respondent).

Unit: "all tapmen, bartenders, beverage waiters, bar-boys

and improvers in the employ of the respondent at Toronto, save and except managers and persons above the rank of manager." (4 employees in the unit).

6477-63-R: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Niagara Dry Beverage Limited (Respondent).

Unit: "all employees of the respondent in its Premix and Vendor Division at Niagara Falls, save and except sales supervisors, route managers, foremen, persons above the rank of sales supervisor, route manager and foreman, office staff, students employed during the school vacation period and persons covered under a subsisting collective agreement between the applicant and the respondent." (3 employees in the unit).

6487-63-R: United Brotherhood of Carpenters and Joiners of America, Local 1988 (Applicant) v. Unicrete Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Lanark, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

6488-63-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1450 (Applicant) v. Baker Investments Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Peterborough, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6492-63-R: International Hod Carriers, Building & Common Labourers Union of America (Applicant) v. Unicrete Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the County of Lanark, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

6495-63-R: United Cement, Lime and Gypsum Workers International Union, C.L.C. (Applicant) v. Indusmin Limited (Respondent).

Unit: "all employees of the respondent in Summerville Township, save and except foremen, persons above the rank of foreman and office staff." (12 employees in the unit).

6499-63-R: United Steelworkers of America (Applicant) v. Reynolds Extrusion Sales Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students hired during the school vacation period." (17⁴ employees in the unit).

6512-63-R: Canadian Transportation Workers' Union No. 166, National Council of Canadian Labour (Applicant) v. Robert Farrish Construction (Respondent).

Unit: "all employees of the respondent at Listowel, save and except foremen, persons above the rank of foreman and office staff." (14 employees in the unit).

6530-63-R: Local 101, Sudbury General Workers Union, Canadian Labour Congress (Applicant) v. Sudbury Motors Limited (Respondent).

Unit: "all employees of the respondent at Sudbury, save and except assistant managers, persons above the rank of assistant manager, salesmen, office staff, persons regularly employed for not more than 24 hours per week, students hired during the school vacation period and persons covered by the Board's Certificate dated June 17th, 1963, certifying the applicant as bargaining agent for certain employees of the respondent." (6 employees in the unit).

6536-63-R: International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC (Applicant) v. Centralab Canada Limited (Respondent).

Unit: "all employees of the respondent at Ajax, save and except foremen, foreladies, persons above the rank of foreman or forelady, and office and sales staff." (94 employees in the unit).

6546-63-R: Retail, Wholesale and Department Store Union, AFL-CIO-CLC (Applicant) v. London Answering Service (Respondent).

Unit: "all employees of the respondent at London, save and except supervisors, persons above the rank of supervisor." (11 employees in the unit).

6553-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Inter City Baking Company Limited (Browns' Bread Division) (Respondent).

Unit: "all retail salesmen and shippers in the employ of the respondent at its Depot in Oakville, save and except supervisors, persons above the rank of supervisor and students hired for the school vacation period." (7 employees in the unit).

6557-63-R: International Hod Carriers Building and Common Labourers Union, Local # 493 (Applicant) v. Gartshore Co. Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorus and in the unorganized Townships of Parke and Avenge and in the Townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

The Board endorsed the Record in part as follows:

"Following the issuing of the certificate in this matter on July 19th, 1963, the Board received Schedules A.B.C.D and material containing specimen signatures from the respondent. The documents were filed within the time provided by the Labour Relations Act and the Board's Rules of Procedure.

The list filed contains the names of 18 persons, 9 of whom are classed as labourers.

After considering all the evidence now before it, the Board reaffirms its decision of July 19th, 1963."

6563-63-R: Local #28, International Brotherhood of Bookbinders (Applicant) v. Ashton-Potter Limited (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen and foreladies, persons above the ranks of foreman and forelady, office and sales staff and persons covered by a subsisting collective agreement between the respondent and Amalgamated Lithographers of America." (44 employees in the unit).

6565-63-R: London and District Building Service Workers Union, Local 220, B.S.E.I.U., A.F. of L.-C.I.O.-C.L.C. (Applicant) v. Rowson's London Limited (Respondent).

Unit: "all employees of the respondent at London, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (13 employees in the unit).

6580-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. Moland Brothers (Lakehead) Limited (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent within a radius of fifty miles from the Federal Building in Timmins, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

6591-63-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Foundation Company of Canada Limited (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland." (10 employees in the unit).

The Board endorsed the Record in part as follows:

"On the evidence it seems clear that the applicant has a pattern of collective bargaining for the area it is seeking in the present case. The respondent proposes the same area. In these circumstances, but bearing in mind that the Board's present policies may be reviewed at a later date (see Andeen Construction Limited, O.L.R.B. Monthly Report, November, 1962, page 295) the Board further finds that all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland, constitute a unit of employees of the respondent appropriate for collective bargaining."

6592-63-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sirotek Construction Limited. (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland." (11 employees in the unit).

6593-63-R: The United Brotherhood of Carpenters and Joiners

of America (Applicant) v. T. A. Andre and Sons Limited (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland." (5 employees in the unit).

The Board endorsed the Record in part as follows:

"On the evidence it seems clear that the applicant has a pattern of collective bargaining for the area it is seeking in the present case. The respondent proposes the same area. In these circumstances, but bearing in mind that the Board's present policies may be reviewed at a later date (see Andeen Construction Limited, O.L.R.B. Monthly Report, November, 1962, page 295) the Board further finds that all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland, constitute a unit of employees of the respondent appropriate for collective bargaining."

6594-63-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Lightfoot Construction Limited (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland." (12 employees in the unit).

The Board endorsed the Record in part as follows:

"It is not entirely clear from the reply whether the respondent consents to the disposition of this case without a hearing. However, assuming the respondent is asking for a hearing, it does not comply with section 75 of the Board's Rules of Procedure, which section is printed in full on

the reply form. Furthermore, the employees have not submitted any statement of desire to make objections and representations. In these circumstances, the Board does not deem it necessary to direct a hearing."

The Board further endorsed the Record in part as follows:

"On the evidence it seems clear that the applicant has a pattern of collective bargaining for the area it is seeking in the present case. The respondent proposes the same area. In these circumstances, but bearing in mind that the Board's present policies may be reviewed at a later date (see Andeen Construction Limited, O.L.R.B. Monthly Report, November, 1962, page 295) the Board further finds that all carpenters and carpenters apprentices in the employ of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland, constitute a unit of employees of the respondent appropriate for collective bargaining."

6613-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. J. Watt & Company Ltd. (Builders) (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Elgin, Middlesex, Perth, Huron, Bruce and Oxford, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

6302-63-R: The Canadian Union of Operating Engineers (Applicant) v. The Hydro Electric Power Commission of Ontario (Respondent) v. The International Union of Operating Engineers (Intervener) v. Ontario Hydro Employees' Union Local 1000 N.U.P.S.E. C.L.C. (Intervener).

Unit: "all stationary engineers employed by the respondent at 620 University Avenue and 60 Murray Street, Toronto, save and except the chief engineer." (6 employees in the unit).

| | |
|--|---|
| Number of names on revised eligibility list | 6 |
| Number of ballots cast | 6 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked in favour of International Union of Operating Engineers Local 796 | 2 |

Certified Subsequent to Post-Hearing Vote

5343-62-R: Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. Discount Foods Limited (Respondent) v. Loblaw's Workers' Council (Intervener) v. Retail Clerks International Association (Intervener).

Unit: "all employees of the respondent in its stores in Brantford Township, save and except store managers, persons above the rank of store manager, meat managers, office staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period."
(12 employees in the unit).

Certificate issued to the intervener, Loblaw Workers' Council.

The applicant, Local Union 633, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, sought a bargaining unit consisting of meat department employees; the two interveners sought an "all employee" unit. The Board defined 2 constituencies (constituency no. 1 consisting of the employees in the meat department, constituency no. 2 being an "all employee" constituency) and directed that a representation vote be taken in each constituency. The direction for the taking of the vote offered voters in constituency no. 1 a choice between the applicant and either of the two interveners, and voters in constituency no. 2 were offered a choice between the two interveners. The direction provided that the ballots cast in constituency no. 1 should be counted and the results announced before voting commenced in constituency no. 2. If a majority of ballots cast in constituency no. 1 were marked in favour of the applicant, the employees in that constituency would not be eligible to vote in constituency no. 2. The result of the balloting in constituency no. 1 was as follows:

| | |
|--|---|
| Number of names on eligibility list | 3 |
| Number of ballots cast | 3 |
| Number of ballots marked in favour of applicant | 0 |
| Number of ballots marked in favour of intervener, Loblaw Workers Council | 3 |
| Number of ballots marked in favour of intervener Retail Clerks International Association | 0 |

In view of this result, the employees in constituency no. 1 were eligible to vote in constituency no. 2 and the result of the balloting in this constituency was as follows:

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| Number of names on revised eligibility list | 12 |
| Number of ballots cast | 12 |
| Number of ballots marked in favour of intervener, Loblaw's Workers' Council | 12 |
| Number of ballots marked in favour of intervener, Retail Clerks International Association | 0 |

5359-62-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Chrysler Canada Ltd. (Respondent).

Unit: "Having regard to the agreement of the parties, the Board finds that all office and clerical employees of the respondent in its offices in the City of Windsor or the Township of Sandwich East save and except Supervisors and those above the rank of Supervisor, Private Secretaries to Supervisors and above, and employees employed within the following classifications:

Management Trainee, Photographer Technician, Tax Analyst, E.D.P. Analyst, E.D.P. Technician, Systems Analyst, Marketing and Distribution Analyst, Program Planning Coordinator, Buyer, Coordinator of Vendor Tooling, Parts Marketing Specialist, Industrial Engine Technician, Parts Remanufacturing Development Technician, Staff Man - Sales Administration, Staff Man - Sales Operations, Staff Man - Production Control, Product Engineer, Confidential Clerk to Plant Management, Cashier, Credit Manager, and all employees in the following divisions, departments or sections: Personnel Division, Plant Labour Relations Dept., Manufacturing Budget Dept., Salary Payroll and Benefits Dept.,

Systems and G. & A. Budget Dept., Profit Planning and Analysis Dept., Product Analysis Dept., Budget and Financial Analysis Section of the Parts Accounting Dept., General Ledgers Dept., Industrial Engineering Dept., Quality Engineering Dept., and the Manufacturing Engineering Dept., with the exception of employees on the Engineering Detail Man classification.

The foregoing description of the bargaining unit shall be construed to exclude from the bargaining unit all employees in the following departments except Clerks, Typists and Stenographers unless acting as Private Secretaries to Supervisors and above: Market Representation Dept., (including Dealer Development Dept., Dealer Enterprise Dept., Dealer Planning Dept., Business Management Dept.), Marketing Services Dept., (including Truck Sales-Dept., Fleet Sales Dept., Service Engineering Section and Service Promotion Section of the Service Dept.), Banking and Credit Dept., and Advertising and Sales Promotion Dept., constitute a unit of employees of the respondent appropriate for collective bargaining." (513 employees in the unit).

Following the hearing in this matter, the Board, on June 18, 1963, defined a bargaining unit, Board member H. F. Irwin dissenting from the conclusion of the majority in that he would have excluded from the bargaining unit as defined by the majority the following three classifications: production planning clerks, production planning and research analyst and specifications and warranty analyst, on the ground that "the persons occupying these classifications exercise managerial functions and are employed in a confidential capacity in matters relating to labour relations". Subsequently, the parties requested that the Board alter its definition of the bargaining unit in accordance with an agreement between them. Having regard to this joint request, the Board on July 3, 1963, revoked its decision of June 18 and defined the bargaining unit in the terms suggested by the parties, as set out above.

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| Number of names on revised eligibility list | | 472 |
| Number of ballots cast | | 470 |
| Number of spoiled ballots | 1 | |
| Number of segregated ballots (not counted) | 1 | |
| Number of ballots marked in favour of applicant | 270 | |
| Number of ballots marked as opposed to applicant | 198 | |

5968-63-R: Local 280 of the Hotel & Restaurant Employee's & Bartenders International Union A.F.L.-C.I.O.-C.L.C. (Applicant) v. William Firestone and Louis Abroms carrying on the partnership business known as Hotel Wembley (Respondent).

Unit: "all tapmen, bartenders, beverage waiters, bar-boys and improvers in the employ of the respondent at Toronto, save and except managers and persons above the rank of manager." (5 employees in the unit).

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| Number of names on eligibility list | 5 |
| Number of ballots cast | 5 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked as opposed to applicant | 2 |

6278-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Canada Bread Company Limited (Respondent) v. General Workers' Local 800, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America (Intervener).

Unit: "all driver salesmen in the employ of the respondent at its Leamington depot, save and except supervisors and persons above the rank of supervisor." (4 employees in the unit).

(UNIT AGREED TO BY THE PARTIES)

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| Number of names on revised eligibility list | 4 |
| Number of ballots cast | 4 |
| Number of ballots marked in favour of applicant | 4 |
| Number of ballots marked in favour of intervener | 0 |

Certified Subsequent to Pre-Hearing Vote (See page 192)

6259-63-R: Canadian Union of Operating Engineers, (Applicant) v. The Salvation Army Grace Hospital (Respondent) v. Local 944, International Union of Operating Engineers (Intervener).

Unit: "all stationary engineers, firemen, apprentices and their helpers employed by the respondent in its power house at Windsor." (7 employees in the unit).

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| Number of names on revised eligibility list | 8 |
| Number of ballots cast | 8 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked in favour of intervener | 3 |

Applications for Certification Dismissed No Vote Conducted

5547-62-R: Bakery & Confectionery Workers' International Union of America - Factory Bakers Union, Local 264 (Applicant) v. Inter City Bakery Company Limited (Browns Bread Division) (Respondent). (1 employee).

(See also O.L.R.B. Monthly Report July 1963 page 190).

6357-63-R: United Cement, Lime and Gypsum Workers International Union, A.F.L. - C.I.O. - C.L.C., Local 355 (Applicant) v. Harry Hayley & Sons, Limited (Respondent) v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 230 (Intervener). (67 employees).

The Board endorsed the Record as follows:

"This is an application for certification by the applicant union as bargaining agent for employees of the respondent company at Ottawa and Eastview. On March 21st, 1956, the Board certified the intervener union as the bargaining agent for these employees. On May 11th, 1956, the intervener's request that conciliation services be made available to the intervener and respondent was granted and the report of the conciliation board appointed in the matter was mailed to the parties in September, 1956. While the intervener and the respondent have not entered into a collective agreement, the bargaining rights of the intervener have not been terminated, and the evidence before us is not sufficient to sustain a finding that the intervener has abandoned its bargaining rights. In the circumstances where a trade union has been certified but has not made a collective agreement or has not abandoned its bargaining rights, there is no provision in The Labour Relations Act for an application for certification by another trade union. See the Wonder Bakeries Limited Case (1957) C.C.H. Canadian Labour Law Reporter, 1955-59 Transfer Binder, ¶16,099; C.L.S. 76-580; cf. the Canada Sand Paper Case (1958) C.C.H. Canadian Labour Law Reporter, 1955-59 Transfer Binder, ¶16,111, C.L.S. 76-601. It follows that this application must be dismissed."

6526-63-R: Chatham Construction Workers Association, Local No. 53, Affiliated with the Christian Labour Association of Canada (Applicant) v. Ben Bruinsma and Sons Limited (Respondent). (19 employees).

(SEE INDEXED ENDORSEMENT PAGE 223).

Certification Dismissed Subsequent to Pre-Hearing Vote

6260-63-R: Local 944, International Union of Operating Engineers (Applicant) v. The Board of Governors, Metropolitan General Hospital (Respondent) v. Canadian Union of Operating Engineers, Local 102 (Intervener).

Voting Constituency: "all stationary engineers, firemen, apprentices and helpers employed by the respondent in its power house at Windsor, save and except assistant chief engineer and persons above the rank of assistant chief engineer." (9 employees in the unit).

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| Number of names on eligibility list | 9 |
| Number of ballots cast | 9 |
| Number of ballots marked in favour of applicant | 5 |
| Number of ballots marked in favour of intervener | 5 |

Certification Dismissed Subsequent to Post-Hearing Vote

5893-63-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 599 (Applicant) v. E. S. Fox Plumbing & Heating Limited (Respondent).

Unit: "all journeymen pipefitters, plumbers, welders and their apprentices save and except non-working foremen and persons above the rank of non-working foreman." (24 employees in the unit).

On May 31, 1963 the Board endorsed the Record in part as follows:

"The applicant union is [thus] only entitled to a representation vote. It is not in a position to rely on section 7(5) of The Labour Relations Act. In these circumstances no useful purpose would be served by inquiring into the statement of desire filed by a group of employees or into the allegations respecting such statement made by the applicant.

The only outstanding issue remaining in the case is the question of the appropriate geographic area. The Registrar is directed to list the case for continuation of hearing in this matter. Despite previous indications, it is not the intention of the Board to invite representations from other persons. At the request of the respondent, the Board is issuing a summons

directed to the applicant to produce for inspection its collective agreements for the previous two years covering all or any portion of the area which the applicant claims to be appropriate. In order to expedite the hearing, it is suggested that the production be made well in advance of the hearing and that a statement be prepared summarizing the information which it is intended to place before the Board."

On June 18, 1963 the Board further endorsed the Record in part as follows:

"Following the second hearing in this matter on June 11, 1963 the Board duly considered the representations of the parties with respect to the bargaining unit. The evidence does not establish a clear cut pattern for the area sought by the applicant particularly in view of the vagueness of description of the geographic area in the collective agreements relied on by the applicant. There is also no evidence with respect to the extent of the geographic jurisdiction of the applicant. However we are of the opinion that the evidence supports a finding that in this particular case the County of Simcoe would constitute an appropriate area. This leaves the Bracebridge job to be dealt with separately. The Board therefore revokes its finding as contained in paragraphs three and four of its decision dated May 31, 1963.

The Board further finds that all journeymen pipefitters, plumbers, welders and their apprentices save and except non-working foremen and persons above the rank of non-working foreman in the employ of the respondent in the County of Simcoe, constitute a unit of employees of the respondent appropriate for collective bargaining.

The Board further finds that on the basis of all the evidence before it that the number of employees in the bargaining unit on the date of the making of the application was eleven, and that more than fifty per cent but less than fifty-five per cent of the employees of the respondent in this bargaining unit at the time the application was made were members of the applicant at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure.

Unless on or before Friday, June 21st the applicant notifies the Board that it wishes to

make further representations to the Board in view of the Board's findings as set out above, a representation vote will be taken among the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who have not been discharged for cause between the date hereof and the date the vote is taken will be eligible to vote."

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| Number of names on revised eligibility list | 9 |
| Number of ballots cast | 9 |
| Number of ballots marked in favour of applicant | 1 |
| Number of ballots marked as opposed to applicant | 8 |

6084-63-R: London and District Building Service Workers Union, Local 220, B.S.E.I.U. A.F. of L. - C.I.O. - C.L.C. (Applicant) v. Mason Villa Hospital (London) Limited (Respondent).

Unit: "all employees of the respondent at London, save and except professional medical staff, graduate nursing staff, graduate pharmacists, undergraduate pharmacists, graduate dietitians, technical personnel, supervisors, foremen, foreladies, persons above the ranks of supervisor, foreman or forelady, persons regularly employed for not more than 24 hours per week and patients from Ontario Hospitals on rehabilitation training program." (26 employees in the unit).

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| Number of names on revised eligibility list | 21 |
| Number of ballots cast | 21 |
| Number of ballots marked in favour of applicant | 3 |
| Number of ballots marked as opposed to applicant | 18 |

6109-63-R: International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW), (Applicant) v. Canadian Traction Limited (Respondent).

Unit: "all employees of the respondent at Oakville, save and except foremen, persons above the rank of foreman, office staff and students hired for the school vacation period." (40 employees in the unit).

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| Number of names on revised eligibility list | | 37 |
| Number of ballots cast | 38 | |
| Number of ballots spoiled | 1 | |
| Number of ballots segregated (not counted) | 1 | |
| Number of ballots marked in favour of applicant | 16 | |
| Number of ballots marked as opposed to applicant | 20 | |

6163-63-R: Teamsters Chauffeurs Warehousemen and Helpers Local No. 91, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Applicant) v. St. Lawrence Rendering Company Limited (Respondent).

Unit: "all employees of the respondent at Cornwall, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed for the school vacation period." (22 employees in the unit).

| | | |
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| Number of names on revised eligibility list | | 16 |
| Number of ballots cast | 16 | |
| Number of ballots marked in favour of applicant | 2 | |
| Number of ballots marked as opposed to applicant | 14 | |

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY 1963

1289-61-R: United Steelworkers of America (Applicant) v. Continental Can Company of Canada Limited (Gair Paper Products Division) (Respondent).

The Board endorsed the Record as follows:

"This application is withdrawn by leave of the Board in so far as it relates to the following bargaining unit: all office, clerical and technical employees of the respondent at plant #532 (Toronto Corrugated Box Plant) and plant #535 (Toronto Boxboard Mill) and sales office #591 (Corrugated Sales Office), at Toronto, save and except supervisors, persons above the rank of supervisor, salesmen, industrial nurse, employees in the research division of the respondent's paper products group, employees bound by subsisting collective agreements, and one secretary to each of the following: plant manager, industrial relations manager."

6394-63-R: Local 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO CLC (Applicant) v. Carnation Company Limited (Respondent). (3 employees).

6406-63-R: United Steelworkers of America (Applicant) v. C & R Metals Limited (Respondent). (21 employees).

6441-63-R: Brotherhood of Painters, Decorators & Paperhangers of America, Sarnia, Ontario, Local Union No. 1590 A.F.L.-C.I.O. (Applicant) v. Heinz Dittmar (Respondent). (1 employee).

6485-63-R: Ferranti Electronics, Malton, Employees' Association (Applicant) v. Ferranti Electronics, Malton, a division of Ferranti-Packard Electric Ltd. (Respondent) v. Canadian Union of Operating Engineers (Intervener) v. United Electrical, Radio and Machine Workers of America (UE) (Intervener). (19 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING JULY 1963

4036-62-R: Mary Genno (Applicant) v. The United Glass and Ceramic Workers of America (Respondent) v. Foley Potteries Limited, carrying on business under the firm name and style of "Royal Canadian Art Pottery" (Intervener). (GRANTED). (35 employees).

(Re: Foley Potteries Limited, carrying on business under the firm name and style of "Royal Canadian Art Pottery", Hamilton, Ontario)

(SEE INDEXED ENDORSEMENT PAGE 224)

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|---|----|----|
| Number of names on revised eligibility list | | 35 |
| Number of ballots cast | 35 | |
| Number of ballots marked in favour of respondent | 11 | |
| Number of ballots marked as opposed to respondent | 24 | |

6101-63-R: Alfred Dyba (Applicant) v. Dental Technicians Union Local 43, Toronto I.J.W.U. (Respondent) v. Posen and Furie Dental Laboratories Limited (Intervener). (GRANTED). (22 employees).

(Re: Posen & Furie Dental Laboratories Limited, Toronto, Ontario.)

| | | |
|---|----|----|
| Number of names on revised eligibility list | | 22 |
| Number of ballots cast | 21 | |
| Number of ballots marked in favour of respondent | 7 | |
| Number of ballots marked as opposed to respondent | 14 | |

6212-63-R: Gordon Adams (Applicant) v. Food Handlers' Local Union 175 Amalgamated Meat Cutters and Butcher Workmen of N.A., affiliated with the A.F.L.-C.I.O. (Respondent). (GRANTED). (6 employees).

(Re: Goodbaum's Food Markets Limited, Metro Toronto)

| | | |
|---|---|---|
| Number of names on revised eligibility list | | 6 |
| Number of ballots cast | 6 | |
| Number of ballots marked in favour of respondent | 0 | |
| Number of ballots marked as opposed to respondent | 6 | |

6421-63-R: Kai Miller Sorensen on his own behalf and on behalf of the employees of Haines Printing Co. Ltd. (Applicant) v. Local 837 of The International Typographical Union (Respondent). (WITHDRAWN). (9 employees).

(Re: Haines Frontier Printing Limited, Sarnia, Ontario)

6617-63-R: Alfred Schedlbauer (Applicant) v. United Brotherhood of Carpenters and Joiners of America (Respondent). (DISMISSED). (20 employees).

(Re: A.G. Anderson Ltd., London, Ontario)

The Board endorsed the Record as follows:

"This is an application for a declaration terminating the bargaining rights of the respondent pursuant to the provisions of section 43 of The Labour Relations Act.

The respondent was certified as bargaining agent for all employees of A. G. Anderson Ltd. at its plant in London with certain exceptions not here material on the 26th day of February, 1963. Conciliation services were made available to the respondent and A. G. Anderson Ltd. on the

15th day of May, 1963 and a conciliation board was appointed on the 9th day of July, 1963. No report of the conciliation board has been released by the Minister to the parties as of this date.

As one year has not elapsed since the date of certification of the respondent and as no report of the conciliation board has been released by the Minister, the Board is satisfied that pursuant to the provisions of both section 43(1) and section 46(1) of The Labour Relations Act, this application is untimely. Even if an application was made under section 45 it would be untimely.

In view of these circumstances and in accordance with the provisions of section 45 of the Board's Rules of Procedure, the Board is of opinion that the applicant has failed to make a prima facie case for the remedy requested and the application is therefore dismissed."

SECTION 47a

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JULY 1963

6554-63-R: Building Service Employees' International Union, Local 210 (Applicant) v. University of Windsor (Respondent) v. Retail, Wholesale and Department Store Union, Local 319 (Predecessor). (GRANTED).

The Board endorsed the Record as follows:

"This is an application under section 47a of The Labour Relations Act.

Having regard (a) to the agreements of the various interested parties in this matter on file with the Board together with all other materials and documents filed in support of the application;

(b) to the representations of interested parties filed after receipt of notice of the application; and to

(c) the provisions of section 47a; The Board Declares:

1. That Building Service Employees' International Union, Local 210 is the bargaining agent of all employees of the University of Windsor in its maintenance, powerhouse, housekeeping and dietary departments save and except security personnel,

foremen, persons above the rank of foreman, seasonal employees, persons regularly employed for not more than twenty hours per week, members of any religious community, students, office and administrative employees, and members of academic departments;

2. That Retail, Wholesale and Department Store Union, Local 519, is no longer the bargaining agent for any of the employees in the bargaining unit defined in the preceding paragraph."

APPLICATIONS UNDER SECTION 79(2) DISPOSED OF DURING JULY 1963

5713-62-M: Local Union 403; Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Applicant) v. St. Williams Preservers Limited (Respondent).

The Board endorsed the Record as follows:

"Application under section 79(2) of The Labour Relations Act for a determination as to whether W. Taylor, Ernie Carter, Peter Massaloup and Frank Murphy are employees for the purposes of The Labour Relations Act.

We note the agreement of the parties that "W. Taylor should be excluded from the proposed bargaining unit".

We find that Ernie Carter and Peter Massaloup are employees of the respondent for the purpose of The Labour Relations Act.

We find further that Frank Murphy is an employee of the respondent for the purpose of The Labour Relations Act outside the canning season, but that, during the canning season, he exercises management functions and that accordingly during the canning season he is not an employee for the purposes of The Labour Relations Act."

Board Member M. C. Hay dissented and said:

"I dissent. On the basis of the evidence in the report I find that all of the four named persons are not employees for the purposes of The Labour Relations Act."

6199-63-M: International Jewelry Workers' Union, Local 44 (Applicant) v. Morton-Parker Ltd. (Respondent).

The Board endorsed the Record as follows:

"The Board notes the agreement of the parties that Ralph Stapley and Cyrus Garrison exercise managerial functions and that they are not employees of the respondent for the purposes of The Labour Relations Act.

The Board finds that Francis Ralph Hamilton, Harry LeRoy Thurston, Charles Alfred William and Eric Victor Smith are employees of the respondent for the purposes of The Labour Relations Act."

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED
OF DURING JULY 1963

6386-63-U: M. Sullivan & Son Limited, of the City of Kingston, in the County of Frontenac (Applicant) v. International Hod Carriers' Building and Common Labourers', Local 247, City of Kingston, County of Frontenac (Respondent). (DISMISSED).

The Board endorsed the Record as follows:

"The applicant alleges that on or about the 11th day of June, 1963 George Moulton, a business agent of the respondent, counselled, advised and instructed the labourers employed on the job site of the Loyalist Collegiate Institute at Kingston, to cease and refuse to go to work and the labourers concerned did not go to work on that date.

The only evidence in support of the allegations of the applicant is the testimony of Carl Larocque, the superintendent of the Loyalist Collegiate Institute project. Larocque stated that on the morning of June 11th he observed Moulton outside the project property at a distance of some several hundred feet talking to some labourers. The alleged discussion between Moulton and the labourers which lasted for two or three minutes took place after the labourers had failed to report for work that morning.

In our opinion, there is no evidence before us upon which to make a finding that the respondent called or authorized an unlawful strike.

The application, accordingly, is dismissed."

6387-63-U: M. Sullivan & Son Limited, of the City of Kingston, in the County of Frontenac (Applicant) v. Acton Hayes et al (Respondent) (DISMISSED).

The Board endorsed the Record as follows:

"On the morning of June 11th, 1963 the ten named respondents who are labourers employed by the applicant did not report for work at the Loyalist Collegiate Institute job site at Kingston. Article 13 of the collective agreement which is in effect between the applicant and the International Hod Carriers' Building and Common Labourers', Local 247, reads in part as follows:-

"During the currency of this Agreement, the Union covenants that there will be no strike or stoppage of work either complete or partial, for any cause."

The evidence of Carl Larocque, superintendent of the Loyalist Collegiate Institute job site, is that on the morning of June 11th at approximately 8:15, fifteen minutes after the regular starting time of 8 o'clock, he observed two pickets at the entrance to the job site who were picketing on behalf of the bricklayers and masons. Beyond the job site at a distance of several hundred feet, Larocque saw a number of labourers who were in the employ of the applicant gathered in the parking lot of a neighbouring shopping centre. Robert Sullivan, the general superintendent of the applicant for the Kingston area, testified that there was work available for the ten respondents on June 11th. None of the respondents reported for work until June 24th. When the ten men reported for work on that date they were informed that no work was available for them at that time. At the time of the hearing only one of the respondents had been called back to work by the applicant.

Let us assume, without making a finding on the point, that the ten respondents did engage in an unlawful strike by failing to report for work on the morning of June 11th. By reporting for work on June 24th, despite the fact that no work was available, the respondents ceased to be on strike and since that date have been available for work when required. In the Ball Brothers Ltd. Case (1957) C.C.H. Canadian Labour Law Reports, Transfer Binder '55-'59, ¶16,091, C.L.S. 76-576, it was

stated that the Board generally held that a declaration should not be issued in cases in which a strike has been settled before the application has come on for hearing. The decision went on to spell out special circumstances in which a declaration under section 67 would be issued even though the application came on for hearing after the strike had been settled. Such circumstances are (i) where a union has called a number of unlawful strikes as part of a general pattern for gaining its objectives in defiance of the law, and (ii) where, although the particular unlawful strike which provided the occasion for that application has been settled, the employer affected thereby has a reasonable fear that his operation will again be interrupted in a similar fashion. There is no evidence before us nor was it argued that the applicant falls within either of the above exceptions.

In the circumstances of this case the Board is of the opinion that in the exercise of its discretion a declaration under section 67 of The Labour Relations Act should not be issued.

The application, accordingly, is dismissed."

6388-63-U: M. Sullivan & Son Limited, of the City of Kingston, in the County of Frontenac (Applicant) v. Emery Logan et al (Respondents). (DISMISSED).

The Board endorsed the Record as follows:

"Where an employer seeks a declaration under section 67 of The Labour Relations Act that named employees engaged in an unlawful strike, it is incumbent upon the employer to allege and prove that (i) a strike did or is occurring, (ii) the strike was or is unlawful, and (iii) the employees concerned engaged in or are engaging in the unlawful strike.

The parties agreed that the evidence would be that set out by the applicant in its application, which reads as follows:

" The Applicant and the United Brotherhood of Carpenters and Joiners of America, Local 249, Kingston, have a Collective Agreement that was in full force and effect on the

11th day of June, 1963 and the 17th day of June, 1963. One of the Clauses of the said Agreement reads as follows:- 'During the term of this Agreement there shall be no lockout by the company, and no strike, sit-down, work stoppage or suspension of work, either complete or partial for any reason by the employees'.

On or about the 11th day of June, 1963 the following carpenters refused and did not go to work:- Cero Hynonen, Gordon Ruttan, Antti Siekkinen, Olli Tavast, Arvo Makela.

On or about the 17th day of June, 1963 the following carpenters refused and did not go to work:- Emery Logan, Walter Black, Jack Kenny, George Hymers, Venasse Renaud, Aurore Richer, Fred Roper.'

No other evidence was adduced at the hearing of the Board.

There is no evidence before the Board upon which it can make a finding that the respondents refused to work or to continue to work "in combination or in concert or in accordance with a common understanding." The Board, therefore, is not able to make even the required finding that a "strike" as defined in section 1 subsection 1(i) of The Labour Relations Act, did occur.

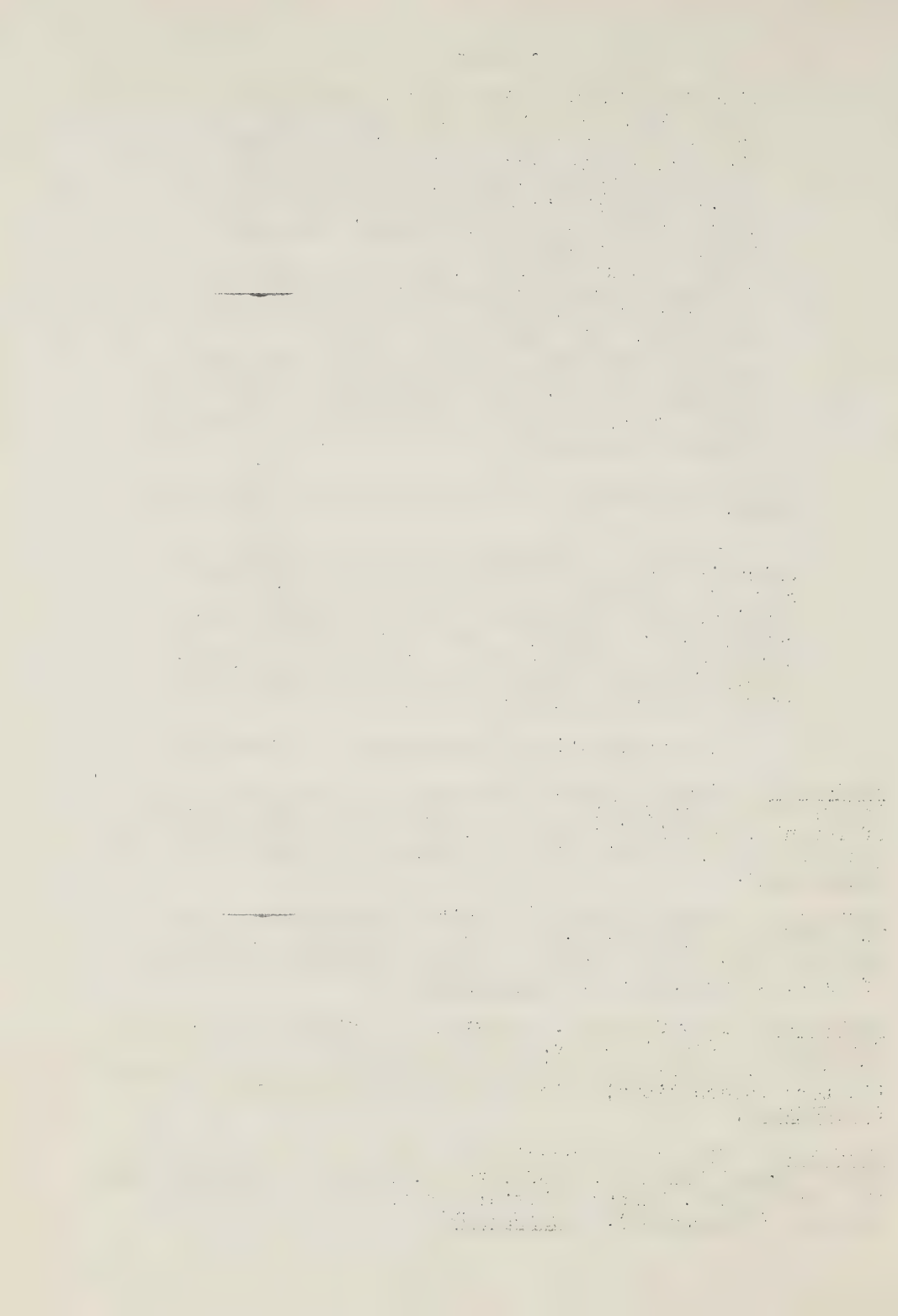
The application, accordingly, is dismissed."

6472-63-U: Albert Salamin, carrying on business as Alps Construction (Applicant) v. The Bricklayers' Union Number 2 of Toronto, Ontario (Affiliated with the Bricklayers, Masons, Plasters International Union of America) (Respondent) (WITHDRAWN).

6473-63-U: George & Asmussen Limited (Applicant) v. The Bricklayers' Union Number 2 of Toronto, Ontario (Affiliated with the Bricklayers, Masons, Plasters International Union of America) (Respondent). (WITHDRAWN).

6474-63-U: Tony Commisso, carrying on business as D M S Contractors, (Applicant) v. The Bricklayers' Union Number 2 of Toronto, Ontario (Affiliated with the Bricklayers, Masons, Plasters International Union of America) (Respondent). (WITHDRAWN).

6475-63-U: Victor Construction Co. Ltd. (Applicant) v. The Brick Layers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers, Masons, Plasters International Union of America) (Respondent). (WITHDRAWN).



6494-63-U: Spalding and Son (Applicant) v. The Brotherhood of Painters, Decorators and Paper Hangers of America, District Council 46 (Respondent). (WITHDRAWN).

6503-63-U: Major Masonry & Construction Limited (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers Masons' Plasterers' International Union of America (Respondent)). (WITHDRAWN).

6504-63-U: Martini Brothers Limited (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers', Masons' Plasterers' International Union of America (Respondent)). (WITHDRAWN).

6505-63-U: De Luca and Mascarini Masonry Contractors Limited (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers', Masons', Plasterers' International Union of America) (Respondent). (WITHDRAWN).

6506-63-U: Phoenix Bros. Limited (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers', Masons', Plasterers', International Union of America) (Respondent). (WITHDRAWN).

6507-63-U: A. Zanini and Company (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers', Masons', Plasterers' International Union of America) (Respondent). (WITHDRAWN).

6508-63-U: Zamparo Brothers (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers' Masons' Plasterers' International Union of America) (Respondent). (WITHDRAWN).

6509-63-U: Leader Masonry and Forming Limited (Applicant) v. The Bricklayers' Union No. 2 of Toronto, Ontario (Affiliated with the Bricklayers' Masons' Plasterers' International Union of America) (Respondent). (WITHDRAWN).

6510-63-U: A. L. Watson Limited (Applicant) v. The Bricklayers' Union No. 2 of Toronto Ontario (Affiliated with the Bricklayers' Masons' Plasterers' International Union of America) (Respondent). (WITHDRAWN).

6538-63-U: The Hydro Electric Power Commission of Ontario (Applicant) v. The Allied Construction Council and United Association of Journeymen and Apprentices of the Plumbing and Fitting Industry of the United States and Canada and Local 46 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Respondent). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 228)

6573-63-U: The Hydro Electric Power Commission of Ontario (Applicant) v. A. Anderson et al (Respondents). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING
JULY 1963

6284-63-U: International Woodworkers of America (Applicant) v. Hanover Kitchens (Canada) Limited (Respondent). (GRANTED).

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against the respondent for the following offence alleged to have been committed: that the said respondent did contravene section 12 of The Labour Relations Act in that on and after April 17th, 1963, it did refuse to bargain in good faith.

The appropriate documents will issue."

Board Member H. F. Irwin dissented and said:

"I dissent. Having regard to all the circumstances, I would not have consented to the institution of a prosecution in this case."

6285-63-U: International Woodworkers of America (Applicant) v. A. E. Starke (Respondent). (DISMISSED).

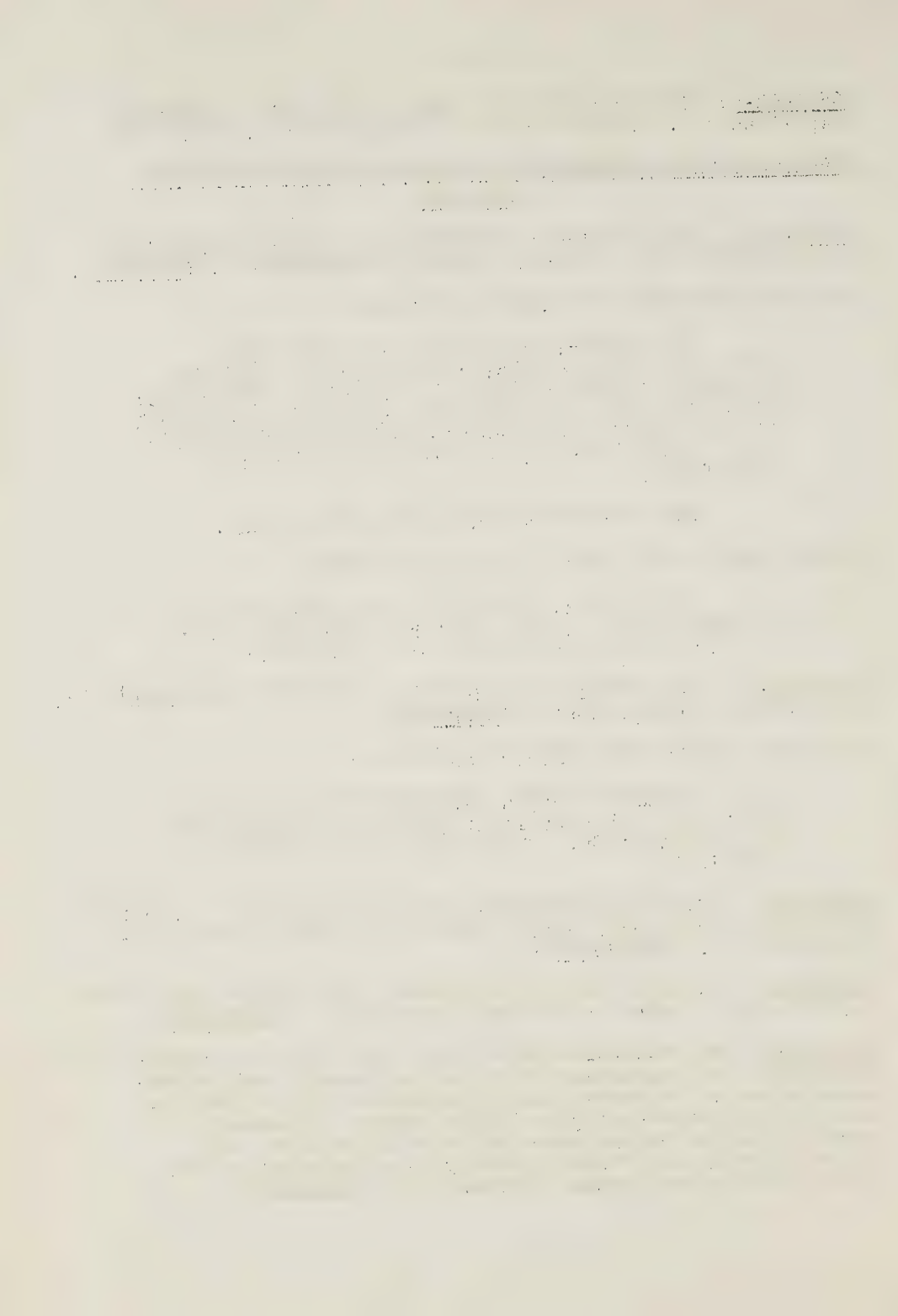
The Board endorsed the Record as follows:

"Counsel for the applicant advised the Board that the applicant was not proceeding with its application. The application accordingly is dismissed."

6403-63-U: Globelite Batteries Limited (Applicant) v. United Electrical, Radio and Machine Workers of America, Local 533 (Respondent). (WITHDRAWN).

6446-63-U: Retail Clerks International Association (Applicant) v. Pollocks Groceries Limited (Respondent). (WITHDRAWN).

6539-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. The Allied Construction Council and United Association of Journeymen and Apprentices of the Plumbing and Fitting Industry of the United States and Canada and Local 46 of the United Association of Journeymen and Apprentices of the Plumbing and Fitting Industry of the United States and Canada (Respondents). (GRANTED).



The Board endorsed the Record as follows:

"The Board hereby consents to the institution of a prosecution against United Association of Journeymen and Apprentices of the Plumbing and Fitting Industry of the United States and Canada and against Local 46 of the United Association of Journeymen and Apprentices of the Plumbing and Fitting Industry of the United States and Canada, two of the respondents in this matter, for the following offence alleged to have been committed:-

That contrary to Section 55 of The Labour Relations Act the said two respondents did between July 2nd, 1963 to July 19th, 1963 call or authorize an unlawful strike by certain employees of the applicant at its Lakeview Generating Plant Project in the Township of Toronto in the County of Peel."

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING JULY 1963

5409-62-U: Sheet Metal Workers' International Association Local 269 (Complainant) v. Selkirk Metal Products Ltd. (Respondent).

On June 20, 1963 the Board endorsed the Record as follows:

"This is a complaint for relief under section 65 of The Labour Relations Act.

The complainant complains that the aggrieved persons, Paul Schaub and Dorman Cutway, have been dealt with by the respondent contrary to the provisions of section 50 of the Act. Under item 3 of the complaint, which directs the complainant to provide a concise statement of the nature of each act or omission complained of, the complainant states as follows:

'On or about February 8, 1963 the aggrieved persons were dealt with by Mr. Sandy McLeod, Plant Superintendent of the respondent contrary to the provisions of section 50 of The Labour Relations Act in that he did on behalf of the respondent discharge Paul Schaub and Dorman Cutway in a way which can only be interpreted by the complainant as discriminatory designed to influence other

employees of the respondent in the light of the fact that the complainant has an application for certification pending before the Board.

A full statement is submitted with this complaint in my letter dated February 9, 1963.'

The letter of February 9th, 1963, addressed to the Registrar of the Board and signed by Ron. S. Taylor, international organizer of the complainant, which was filed with the complaint, reads in part as follows:

"Under Section 65 of the Ontario Labour Relations Act Local Union 269 of this Sheet Metal Workers' International Association of 7 Hillendale Ave. Kingston charges that on February 8th, 1963, Mr. Sandy McLeod the Plant Superintendent of the above named Company did in a way which this Union interprets as discriminatory, discharge from employment, 2 employees named Paul Schaub and Dorman Cutway.

While the issue leading to the discharge was in connection with a Company Pension Plan, Mr. McLeod made reference to Mr. Schaub's activity on the "Committee" referring in turn to the fact that Mr. Schaub was President of the Selkirk Recreation Association an Organization that the Company alleged represents the employees and with whom the Company holds a collective agreement. Mr. McLeod referred to Mr. Schaub's "lack of co-operation on the Committee" and that he did not want him around or words to that effect.

In the light of the fact that our Local Union 269 has presently pending before the Board, an Application for Certification of this Company we can only interpret this action on their part as an attempt to break up any union of the employees of this Company. "

In a letter dated March 29th, 1963 addressed to the solicitors for the respondent in reply to the respondent's demand for particulars, the solicitors for the complainant stated in part:

"Two employees of the respondent, Schaub and Cutway were discharged by one McLeod, a servant or officer of the Respondent on February 8, 1963. Conversations took place at that time between McLeod and the employees of which you will have knowledge.

It will be our respectful submission to the Board that the Respondent committed an unfair practice under Section 50 of the Act by refusing to continue to employ the two persons named because they were both members of the Selkirk Recreation Association and had cooperated with the complainant union which was seeking to represent the employees of the Respondent under the provisions of The Labour Relations Act."

At the hearing before the Board in Brockville on April 1st, counsel for the respondent moved to strike out the complaint on the ground that it was defective in that the allegations contained in the complaint do not show any violation of section 50 of the Act. He also argued that the complainant should not be permitted to amend its complaint so as to allege that the respondent discharged the aggrieved persons because they were members of or cooperated with the complainant union. To permit such amendments would expand the scope and alter the substance of the original complaint. He further argued that if the complainant was permitted to amend its complaint by the provisions of section 65 subsection (4) of the Act, the Board does not have jurisdiction to hear the complaint without appointing a field officer to investigate the complaint as altered and to try to effect a settlement.

Counsel for the complainant argued that the fact of membership by the aggrieved persons in the complainant trade union is apparent from the form itself, or if not apparent it is a fact well known to the employer. Alternatively, he requests permission to amend the complaint to allege that Schaub and Cutway were, at the appropriate time, members of the complainant trade union.

The complainant clearly alleges that the respondent dealt with the aggrieved persons contrary to section 50 of the Act. Although the wording of the complaint is somewhat obscure, we have little difficulty in interpreting the statement that Schaub and Cutway were discharged "in a way which can only be interpreted by the complainant as discriminatory designed to influence

other employees of the respondent in the light of the fact that the complainant has an application for certification pending before the Board" as meaning that the aggrieved persons were discharged because they supported the union application to this Board for certification. (We would mention that the hearing of the certification application before the Board took place on December 10th, 1962. The Board, however, had not handed down any decision with respect to the application at the time that Schaub and Cutway were discharged.) We similarly interpret the sentence "in the light of the fact that our Local Union 269 has presently pending before the Board, an Application for Certification of this Company we can only interpret this action on their part as an attempt to break up any union of the employees of this Company" as indicating support of the union by the aggrieved persons. In supporting the union's application for certification to this Board Schaub and Cutway were exercising their rights under The Labour Relations Act.

In reply to the respondent's demand for particulars the complainant alleges that "the Respondent committed an unfair practice under Section 50 of the Act by refusing to continue to employ the two persons named because they....had cooperated with the complainant union." In our opinion, the particulars provided by the complainant merely clarify the initial complaint and do not expand or alter its substance. .

Having regard to the wording of the original complaint and the particulars provided in the complainant's letter of March 29th, we find that not only has the complainant brought itself within section 50 of the Act, but also it has provided sufficient particulars of the complaint to permit the respondent to meet the charges made against it. In our opinion, to set down the complaint in its present form for continuation of hearing would in no way be a denial of natural justice to the respondent.

The Board accordingly directs the Registrar to set this matter down for a continuation of Hearing."

Board Member M. C. Hay dissented and said:

"I dissent.

The complainant having failed to specify an offence under section 50 of The Labour Relations Act I would dismiss the complaint for want of jurisdiction.

The issues to be determined in the instant case, in my opinion, are as follows:

- (1) Does the complaint as filed with the Board specify an offence under section 50 of the Act thereby giving the Board jurisdiction to hear it?
- (2) If the answer to (1) is no, has the Board jurisdiction at the hearing to grant an amendment to remedy the substantive defect and thus bring the matter within its jurisdiction?
- (3) If the answer to (1) is no, may the complainant rectify a substantive defect by the supplying of particulars after the field officer has inquired into the complaint and reported to the Board?

I will deal with these matters seriatim.

- (1) Does the complaint as filed with the Board specify an offence under section 50 of the Act. In my respectful opinion it does not.

It is trite to say that not every discharge of an employee by his employer, no matter how unfair it may be, will entitle the employee to have the matter adjudicated by the Board. To avail himself of the remedies of The Labour Relations Act, and to give the Board jurisdiction to deal with the matter, the employee must bring himself within the legislation by alleging that in discharging him his employer discriminated against him thereby committing an offence contrary to some specific provision or provisions of the Act. His failure to do so is not a mere technical irregularity which may be cured by section 86 of the Act. Rather it is a substantive defect which goes to the very root of the claimant's right to bring his claim and the Board's jurisdiction to hear it.

In the instant case, in the complaint filed with the Board the complainant alleges that the Respondent Company discharged two named employees because, as members of a Recreation Association Committee, they failed to co-operate with the Respondent Company in discussions concerning a pension plan. In the words of the complaint "the issue leading to the discharge was in connection with a Company Pension Plan" and Mr. Schaub's "lack of co-operation on the Committee". Nowhere in the complaint is there an express allegation, nor I suggest can such be reasonably implied, that either or both of the men in question were, within the language of section 50 (a) "a member of a trade union" or were "exercising any other

rights under the Act". In fact, the very amendment which the complainant subsequently sought is a clear admission of this readily apparent defect.

With respect I am unable to agree with my colleagues that, "although the wording of the complaint is somewhat obscure", it loses its obscurity when reference is had to the statements quoted in paragraph 5 of the majority decision. Indeed, reference to these statements, a careful reading of the whole complaint and a review of the pertinent facts surrounding the matters referred to in the complaint impells me to the conclusion that the complainant trade union is not complaining about the discharges per se, but rather that the Respondent company's action was in some manner discriminatory against the trade union itself.

This is not the situation where a company discharges an employee in the shadow of an organizing campaign. Nor is it the situation where the trade union is in a vote position and disciplinary action is taken against an employee to dissuade other employees from voting for the trade union. In either of these situations an inference might be drawn that the employee disciplined was likely a union member and that the company's action in discharging him was to influence others. In the instant case, however, the trade union well knew that the application for certification which it states in its complaint was pending before the Board had in fact been heard by the Board some two months prior to the occurrence of the discharges and that its membership position relative to such application could not in any way be affected by the company's subsequent action. From the endorsement in which the Board subsequently certified the trade union, I suggest it was also well within the complainant's knowledge that its right to outright certification without a vote was beyond question.

The Board's endorsement granting the complainant trade union certification reads in part as follows.

" The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant at the material times fixed in accordance with The Labour Relations Act and the Board's Rules of Procedure.

A certificate will issue to the applicant."

Had the company, its employees or any other person raised any issue which would have affected the union's application, its membership position or its right to certification, the Board following its usual practice would have stated in its endorsement its disposition of such issue. No issue having been stated in the endorsement it would seem apparent that the trade union, to its knowledge, on the date of the hearing of its application on December 10th was clearly in a position of outright certification without a vote. The Respondent company, thus not being in a position to adversely affect the trade union's application for certification at the time of the discharge of the men in question, I am unable to infer that they were discharged for union activity. Having regard to the complainant's knowledge of this fact, I can only conclude that if its statements in the complaint that the men were discharged "in a way which can only be interpreted by the complainant as discriminatory designed to influence other employees of the Respondent" and "we can only interpret this action on their part as an attempt to break up any union of employees of this company" are to bear any reasonable meaning they must imply discrimination against the complainant trade union itself and/or the totality of its members in the Respondent company. If this is so, in my view the application is improperly brought under section 65 and the Board is without jurisdiction to hear it. An Application for Consent to Prosecute would appear to be the proper procedural step.

Accordingly I find that if the application is construed as a complaint that the men in question were discharged contrary to section 50, the failure to specify an offence under the said section leaves the Board without jurisdiction to hear it. Alternatively I find that if the company's action in discharging the men in question is construed as being an act of discrimination against the trade union itself, an application under section 65 is inappropriate in the circumstances and the Board is without jurisdiction to hear it.

While it is my opinion that the Board should not be so technical as to deny parties the essentials of natural justice, I likewise hold it should not by an unreasonable straining of the wording of a complaint seek jurisdiction to deal with it. In my view there is a primary onus on the claimant to clearly specify in his claim the essential ingredients of an offence under the Act. The complainant in this case has clearly failed to discharge such an onus.

(2) Has the Board jurisdiction at the hearing to grant an amendment to remedy a substantive defect in the complaint? In my opinion it does not.

At the hearing before the Board on April 1st, while counsel for the complainant maintained the original complaint was not defective, he did, in the alternative, request permission of the Board to amend the complaint to allege the two employees in question were members of the complainant trade union.

In my view the Board is not empowered to grant the requested amendment, the effect of which is to specify, for the first time, a new and proper complaint. Section 65 (4) provides in part,

"Where a field officer is unable to effect a settlement of the matter complained of, the Board may inquire into the complaint"

It is thus clear that the only complaint into which the Board may inquire, is the very complaint which the field officer has investigated, attempted to settle and concerning which he has reported to the Board. The complaint which was investigated in the instant case was the complaint as originally filed with the Board and not the new complaint which the complainant now seeks to establish by the requested amendment.

(3) Does the furnishing of particulars rectify the substantive defect thus bringing the matter within the jurisdiction of the Board? In my view it does not.

On March 29th, after the field officer's investigation of the complaint had been completed, his report received by the Board and the matter listed for hearing the complainant's solicitors, in a letter addressed to the solicitors for the Respondent, sought by way of particulars to remedy the defect and thus bring the complaint within section 50 by the addition of the words underscored below.

"It will be our respectful submission to the Board that the Respondent committed an unfair practice under section 50 of the Act by refusing to continue to employ the two persons named because they were both members of the Selkirk Recreation Association and had co-operated with the complainant union which was seeking to represent the employees of the Respondent under the provisions of The Labour Relations Act."

It is thus apparent that the substantive defect which the complainant seeks to remedy by way of particulars presents the company for the first time with a proper complaint within the Act - a complaint concerning which it has had no opportunity to negotiate for settlement. To thus put the Respondent to its defence without it being accorded the prior opportunity of settlement as established under the procedural provisions of the Act, is in my view a denial of natural justice. Additionally to permit the complainant to thus rectify the defect in its complaint by way of particulars is to allow it to do indirectly what the Board is not empowered to do directly by way of amendment to the complaint.

For the above reasons I would have dismissed the complaint.

Before leaving this matter, I feel compelled to comment upon the substantial injustice which may be done to the Respondent by way of penalty occasioned by the delay which has been caused by the claimant's failure to clearly specify his complaint.

Section 65 empowers the Board, if the complainant proves his case, to reinstate the two men in question with full loss of earnings and other benefits from the date of discharge to the date of reinstatement. Had the complaint been dismissed, as I hold it should have been, the complainant is not precluded from immediately filing a proper complaint. In this latter case, however, if he was successful in proving his case, loss of earnings would be assessed only from the date of filing his new claim to the date of reinstatement. In other words the penalty for delay would clearly and properly fall upon the party who occasioned it."

5977-63-U: International Union of Doll & Toy Workers
(Complainant) v. Lido Toy Ltd. (Respondent).

(SEE INDEXED ENDORSEMENT PAGE229)

6095-63-U: Retail, Wholesale and Department Store Union,
AFL:CTO:CLC (Complainant) v. K. M. A. Caterers Ltd.
(Respondent).

On July 2, 1963 the Board endorsed the Record as follows:

"The Board is satisfied that Richard Chittenden was discharged by the respondent on the 25th day of April, 1963, contrary to The Labour Relations Act and

that Donald Culbert was discharged by the respondent on the 26th day of April, 1963, contrary to The Labour Relations Act.

The Board determines that:

- (a) Richard Chittenden and Donald Culbert shall be reinstated forthwith in the positions they held at the time of their discharge;
- (b) that the respondent pays forthwith
 - (i) to Richard Chittenden the sum of \$89.00.
 - (ii) to Donald Culbert the sum of \$75.00."

Board Member R. W. Teagle dissented and said:

"I dissent. Although I concur with that part of the majority decision wherein the respondent is directed to make payment to the aggrieved persons, I would exercise my discretion and refuse to reinstate Richard Chittenden and Donald Culbert on the grounds that Richard Chittenden admitted at the hearing that he had lied to his employer and had deliberately stalled with respect to the purchase of a company uniform as requested by the respondent for a period of several months. Having regard to the fact that both the aggrieved persons are employed in as good if not better positions at the present time I can see no advantage to either the aggrieved persons or the respondent to cause the aggrieved persons to be re-employed by the respondent."

On July 31, 1963 the Board endorsed the Record as follows:

"The Board finds that all the issues raised in the letter from the respondent dated July 18th, 1963 were argued at the hearing in this matter on June 13th, 1963 by the respondent and all the issues were considered by the Board prior to its decision of June 13th, 1963.

Since the respondent does not allege that there is new evidence which was not available to it at the hearing, and since no new issue has been raised that could not have been argued at the hearing in this matter by the respondent, the Board therefore does not consider it advisable to reconsider, vary or revoke its decision dated July 2nd, 1963."

Board Member R. W. Teagle said:

"Without derogating from my dissent dated July 2nd, 1963 in this matter, I agree with the majority that there are no grounds for reconsideration."

6200-63-U: Canadian Brotherhood of Railway, Transport and General Workers (Complainant) v. MacDonald Cartage (Respondent).

The Board endorsed the Record as follows:

"Having regard to all the evidence, the Board finds that the complainant has failed to satisfy the Board that A. Farmer was discharged by the respondent contrary to the provisions of The Labour Relations Act.

The complaint is therefore dismissed."

6205-63-U: The Canadian Brotherhood of Railway, Transport, and General Workers, (Complainant) v. MacDonald Cartage (Respondent).

The Board endorsed the Record as follows:

"The complainant having failed to adduce evidence at the hearing in this matter, this complaint is accordingly dismissed."

6389-63-U: General Truck Drivers' Union, Local 879, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Complainant) v. Phillips Transport Limited (Respondent).

6398-63-U: United Steelworkers of America (Complainant) v. Seaway Plate & Structural Steel Ltd. (Welland) (Respondent). (WITHDRAWN).

6428-63-U: Warehousemen and Miscellaneous Drivers Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Hazel Bishop of Canada, Ltd. (Respondent).

6442-63-U: Fur Workers' Union, Local 82, AMC & BW of NA, AFL-CIO (Complainant) v. Colquhoun's Scottish Fur House Ltd. (Respondent).

The Board endorsed the Record as follows:

"In view of the assurances given the Field Officer by both the complainant and the respondent,

the Board does not deem it advisable to inquire further into the complaint in this matter by means of a hearing by the Board.

The complaint is therefore dismissed."

6511-63-U: Sheet Metal Workers' International Association, Local Union 568 (Complainant) v. International Cooperage Company of Canada Limited (Respondent).

CERTIFICATION INDEXED ENDORSEMENT

6526-63-R: Chatham Construction Workers Association, Local No. 53, Affiliated with the Christian Labour Association of Canada (Applicant) v. Ben Bruinsma and Sons Limited (Respondent). (DISMISSED JULY 1963)

The Board endorsed the Record as follows:

"In support of its application for certification the applicant filed 19 combination application cards and receipts. Fifteen of the cards and receipts are dated February 3, 1962, and 2 are dated February 5, 1962. The date of making of the application is July 9, 1963. It is clear that all but 2 of the cards and receipts are more than a year old. There is no documentary evidence before the Board indicating that the employees have made any further payments or done any act which could be taken as confirmatory evidence of their desires with respect to membership in the applicant. (Such confirmatory evidence if less than a year but more than 6 months old, may be considered by the Board as sufficient to warrant the ordering of a representation vote. If the evidence is not more than 6 months old, it is normally considered sufficient to warrant outright certification.) The time within which documentary evidence may be filed under the provisions of The Labour Relations Act and the Board's Rules of Procedure has now passed.

The documentary evidence of membership filed by the applicant clearly does not satisfy the Board's requirements. See Firestone Tire and Rubber Company Limited Case (1951) C.C.H. Canadian Labour Law Reports, Transfer Binder 49-54, ¶17,022, C.L.S. 76-699; Highland Construction Co. Case, O.L.R.B. Monthly Report, November, 1961, page 266. In these circumstances, therefore, the application is dismissed.

Having regard to the above findings, it is not necessary to consider the status of the applicant or

the question as to whether this is a case which falls under the construction industry sections of The Labour Relations Act."

TERMINATION INDEXED ENDORSEMENT

4036-62-R: Mary Genno (Applicant) v. The United Glass and Ceramic Workers of America (Respondent) v. Foley Potteries Limited, carrying on business under the firm name and style of "Royal Canadian Art Pottery" (Intervener). (GRANTED JULY 1963).

(Re: Royal Canadian Art Pottery,
Hamilton, Ontario)

On September 24, 1962 the Board endorsed the Record as follows:

"In this case counsel for the intervener on examination in chief asked the witness whether he had certain conversations with other employees of the intervener. No objection was taken to this question by the other parties. There is no question but that the questions put to the witness were on a matter relevant to an issue before the Board. The representative of the respondent was permitted to cross examine the witness on his answer to the question. Since the evidence of this witness on this matter bears directly on and is relevant to an issue before the Board and is not purely collateral, the respondent is entitled to attack the credit of the witness by leading evidence contradicting the statement of that witness. See R. v. Steinberg, [1931] O.R. 222, per Grant J. A., aff'd [1931] SCR 421, 56 CCC 9, [1931] 4 D L R 8.

In these circumstances the respondent will, at the continuation of the hearing in this matter, be entitled to call as witnesses the persons he indicated at the previous hearing he wished to call."

On February 28, 1963 the Board further endorsed the Record as follows:

"Application for termination of bargaining rights.

Just prior to the first hearing, the respondent trade union made allegations against a foreman of the intervener, one Dell Young, with respect to conversations he had with a former employee, Maureen Bishop. At a later date the respondent sought leave to file further allegations against the foreman but leave was refused in view of the time at which they were made, the further delay in the proceedings that

would result and because the respondent had had ample opportunity to make investigations. The Board is concerned, therefore, with only the one charge, that involving Dell Young qua Maureen Bishop.

The only evidence heard directly in support of the charge was that of Maureen Bishop. Her story is denied by Dell Young.

We are unable to give credit to the uncorroborated evidence of Maureen Bishop. We simply cannot believe that a person who was allegedly threatened by an employer one day, fired the next day and who immediately complained to the union about the firing, thus setting in motion proceedings under section 65 of The Labour Relations Act, would not that very day or at least during subsequent discussions with the union, its solicitor, or during the course of the section 65 proceedings, refer to the fact that such a threat had been made. Further, Maureen Bishop testified that after the threat was made she thereupon signed the petition being circulated in April of 1962. Her name does not appear on that document. In these circumstances, we must find the charge against the foreman, Dell Young, has no substance.

It therefore becomes unnecessary to deal with the evidence of Lis Maulette which was admitted solely on the question of the credibility of the testimony of the foreman, Dell Young. However, had we been called on to do so, we would not have found that her evidence discredited that of the foreman. However much sympathy one might have for this unfortunate young lady, little weight can be attached to her evidence in view of the evidence of Shirley Furler and Mary Genno whose evidence we are prepared to accept when it contradicts that of Lis Maulette, and in view of the further fact that Miss Maulette was not excluded from the hearing when other evidence was being heard.

This case must thus be decided on the basis that the charges of management interference made by the respondent are unfounded. The respondent argues, however, that in the other circumstances surrounding the origination and circulation of the document (hereinafter referred to as the petition) filed in support of the application there is evidence of acts or conduct on the part of management which warrant dismissal of the application. The test which the Board has applied in dealing with matters of this kind is well set out in

the following extract from the reasons for decision of the Board in Island Lake Lumber Company Limited O.L.R.B. Monthly Report, September 1959, p. 227: "where an applicant for a declaration terminating bargaining rights has had the advantage of support from an employer, the Board must scrutinize the evidence presented by or on behalf of the applicant very closely to insure that the documentary evidence submitted by the applicant constitutes a free expression of the wishes of the employees".

See also International Cooperage Company of Canada Ltd. O.L.R.B. Monthly Report, June, 1960, p. 117; Minit Car Wash & Garage Limited O.L.R.B. Monthly Report, January, 1960, p. 351.

In other words, the Board will look to all surrounding circumstances and when it concludes that the acts or conduct of management have not inhibited the employees from voluntarily expressing their wishes, the documentary evidence will normally be accepted. See for example Kayson Rubber & Plastics Ltd. (Ont.), C.C.H. Canadian Labour Law Reporter, Transfer Binder 1955-59, ¶16,128; Pyrotenax of Canada Ltd., C.C.H. Canadian Labour Law Reporter, Vol. 1, ¶16,170; Canadian General Electric Company, C.C.H. Canadian Labour Law Reporter, Vol. 1, ¶16,191.

There is perhaps one exception to this rule and that is the case where, even though the employees may not have been aware of employer participation, that participation is so great that the person ostensibly taking up the document and making the application is regarded as the alter ego of management. See Remington Rand Limited, C.C.H. Canadian Labour Law Reporter 1954-59, Transfer Binder, ¶16,055. It is clear that on the evidence in this case, the Remington Rand principle is not applicable here.

What evidence will persuade the Board that the wishes of the employees have been inhibited by the actions of management, is, of course, a matter to be decided in each individual case on the basis of the evidence and the inferences that may reasonably and rationally drawn from such evidence. In some cases, as for example Harry Hayley & Sons Limited, C.C.H. Canadian Labour Law Reporter, Transfer Binder, ¶16,106, there is little difficulty in arriving at a conclusion. Other cases may present more difficulty.

In the present case one of the arguments advanced most strongly by the respondent trade union was in connection with the manner in which the document filed in support of the application was prepared. However, we can find no reason to doubt the testimony given by the applicant's solicitor on this point. His evidence was given in a clear, straight forward and completely frank manner. In the circumstances of this case we cannot agree that the employer, in supplying the list of names and addresses of its employees to the solicitor for the applicant, did so knowing the purpose for which they would be used. On the contrary, on the evidence before us it is clear that other proceedings involving the employer were at or about that very time taking place before the Board. In our view, if any inference can be drawn the more probable one is that the employer would believe that the list was required in these other proceedings. There is no suggestion that the employer had any knowledge at the time in question that the solicitor to whom the list was supplied was acting for the applicant.

That being the case, having regard to all the evidence before the Board and to inferences which in our judgment may reasonably be drawn therefrom, we have come to the conclusion that the evidence does not disclose participation by management to the degree that we are able to conclude that the employees who signed the petition did not do so voluntarily within the meaning of section 43(3) of The Labour Relations Act. In this regard it may not be amiss to point out that a strike has been in progress at the employer's premises for some considerable time; that the vast majority of the employees who signed the document did not join in the strike; that there was considerable evidence before the Board that employees who crossed the picket line were at times subject to abuse and threats. On the evidence before the Board, it was clear that this was an important reason for bringing the present application.

Having regard to the above considerations, the Board is satisfied that not less than fifty per cent of the employees of Foley Potteries Limited, carrying on business under the firm name and style of "Royal Canadian Art Pottery" have voluntarily signified in writing that they no longer wish to be represented by the respondent."

Board Member G. R. Harvey dissented and said:

"I dissent. Counsel for the applicant testified that he requested of management the names and addresses

of the employees but did not disclose the reason for the request. Counsel further stated the names and addresses were delivered to him by a person who said his instructions from management were to first request the name and purpose of the client. Counsel refused this information but the list of names was left with him. There was no evidence that the messenger consulted by phone with management concerning his instructions regarding delivery of the list to counsel.

Evidence disclosed the existence of a strike and a picket line. The strike and union activities on the picket line was a lively issue and was clearly before the employees and management at all relevant times. Under such circumstances it is not a reasonable assumption that management would deliver this type of information usually held to be confidential if there was a vestige of doubt in the mind of management that the client could possibly be the union. On the basis of this reasoning it is a logical and reasonable inference to hold that management learned the identity of the client either directly or indirectly.

The names and addresses thus provided appearing on the face of the petition would readily be recognized by the employees as information that only management could supply. There was an earlier petition prepared by the applicant which the applicant discarded to which some signatures had been affixed as it was felt the petition may not have been in proper order. This petition did not carry the names and addresses of the employees provided by management.

In view of all the circumstances in this case I find the employer assisted the applicant in the origination and preparation of the petition and this assistance by its very nature was evident to the employees and for this reason I would dismiss the application."

STRIKE DECLARATION INDEXED ENDORSEMENT

6538-63-U: The Hydro-Electric Power Commission of Ontario (Applicant) v. The Allied Construction Council and United Association of Journeymen and Apprentices of the Plumbing and Fitting Industry of the United States and Canada and Local 46 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Respondent). (GRANTED).

The Board endorsed the Record in part as follows:

"No evidence was adduced by the applicant to establish that any work stoppage was called or authorized by any one acting on behalf of the Allied Construction Council or on behalf of The United Association of Journeymen and Apprentices of Plumbing and Fitting Industry of the United States and Canada. The application with respect to these named respondents must, therefore, be dismissed.

As Local 46 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada filed a reply to the application in which it stated that the correct name of the respondent was Local 46, and since it was represented at the hearing, the Board, in these circumstances, is constrained to amend the style of cause in the application by adding as a respondent thereto Local 46 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada.

Having regard to all the evidence, the Board finds that Local 46 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada has since on or about July 2nd, 1963, called and authorized a work stoppage in which K. J. Mann, R. H. McNulty, W. C. McConville, A. Mezzanotte and H. White have participated and are participating at the Hydro-Electric Power Commission of Ontario Project at Lakeview. The Board declares that this work stoppage called and authorized by Local 46 of The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada is an unlawful strike contrary to the provisions of section 54 of The Labour Relations Act."

SECTION 65 INDEXED ENDORSEMENT

5977-63-U: International Union of Doll & Toy Workers (Complainant) v. Lido Toy Ltd. (Respondent).

The Board endorsed the Record as follows:

"As a condition of the adjournment of the hearing of this complaint, the complainant undertook to the Board to file a doctor's certificate evidencing

that Joseph Dithurgide's non-attendance at the hearing was due to illness. Although the Registrar has from time to time repeatedly requested the complainant to comply with its undertaking and file the certificate the complainant has still neglected to file the same. In these circumstances the complaint with respect to Joseph Dithurgide must, therefore, be dismissed.

The complaint with respect to Myrtle Barlow was withdrawn at the hearing."

SPECIAL ENDORSEMENT IN CONCILIATION APPLICATIONS DISPOSED
OF DURING JULY 1963

6502-63-C: Local Union 1681 of the I. B. E. W. (Applicant)
v. "Elco" Electric Ltd. (Respondent). (DISMISSED JULY 1963).

The Board endorsed the Record as follows:

"The parties are agreed that notice by the applicant union to change the terms of the collective agreement in force from April 1st, 1961 to March 31st, 1963 was late under the provisions of Article 1, section 1 of the agreement. The terms of that section bring the case within the principle set out in Hield Brothers, (1957) C.C.H. Canadian Labour Law Reports, Transfer Binder 1955-1959, 16,072, C.L.S. 76-549. Although the parties have met and bargained, it is clear that the respondent did so only on condition that its position with respect to renewal would not therefore be prejudiced.

In these circumstances, we are unable to see how we can give any effect to the submissions of the applicant.

In the result, therefore, the application must be dismissed.

In reaching this conclusion, the Board must not be taken to have expressed any opinion on the merits of the present dispute between the parties. The parties are bound by a collective agreement and their rights and remedies must be determined in that context."

CONSIDERATION OF BOARD DECISION

5298-62-R: International Woodworkers of America (Applicant) v.
Faultless Casters Limited (Stratford) (Respondent). (GRANTED
MAY 1963).

On July 29, 1963 the Board further endorsed the Record as follows:

"A document was submitted to the Board as indicative of opposition by some of the employees of the respondent to the application for certification of the applicant. One of the employees of the respondent testified as to the origination and circulation of the document submitted and he stated that he had drafted the document himself and had the document typed by one of the stenographers employed in the office of the respondent. He further testified that the choice of the words in the document was his own, that he had not collaborated with anyone nor had he received assistance from anyone in the choice of words used in the document and that the stenographer who typed the document did not change the words he had chosen. However, having regard to the manner in which he gave his evidence and especially having assessed his knowledge and use of the English language and comparing this to the wording of the document, it was apparent to the majority that the language used in the document was not the language of the witness. Indeed, after having heard the document (the body of which contained six lines) read by the chairman of the division of the Board hearing this matter, and having himself read the document for the purpose of identifying it, the witness was unable to tell us what the document said when requested to do so by a member of the Board.

We therefore find on the basis of credibility that the witness was not a truthful witness. Accordingly his evidence relating to the origination of the document submitted in this case cannot be accepted as a true version of the facts.

In these circumstances having regard to the credibility of the witness, we do not believe the evidence concerning the origination of the document submitted to the Board as indicative of opposition by some of the employees of the respondent to the application of the applicant and we are not prepared to hold that the document weakens the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote in this case.

Having had the opportunity to read our colleague's dissent, we are of opinion that there is nothing in the dissent of our colleague which was not considered by this division of the Board prior to the majority arriving at its decision which is based on the credibility of the witness who adduced evidence in support of the origination of the petition."

Board Member M. C. Hay dissented and said:

"I dissent.

On the basis of the evidence in this matter, I find that the document in opposition to the applicant's application for certification (hereinafter for convenience called the petition) clearly weakens the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote.

The facts in this case are not in dispute. The areas of difference between my colleagues and myself relate only to the credibility of the witness who testified on behalf of the petitioners and the implications which necessarily and logically flow from such finding. With respect to credibility, the employee who appeared and testified at the hearing is a mature man who has been in the employ of the respondent for some 13 years. He stated in evidence that he alone was the author of the petition; that he had not discussed the matter with management nor had management discussed it with him; that he personally secured all the signatures to the petition; that no member of management was present when the petition was typed, nor had any member of management knowledge of or authorized the typing of the petition; that no member of management was present when the signatures to the petition were obtained; that he mailed the petition to the Board and that all of these activities were conducted outside of his working hours. Accordingly, having thus met the Board's requirements as established by its Rules of Procedure and Regulations, and in the absence of contradictory evidence, the Board following its usual practice would have directed a representation vote.

During the course of a somewhat lengthy and searching examination of the witness by the Board, the witness was asked to repeat the wording of the petition. His inability to approximate the exact wording of the petition, coupled with his choice of language throughout his examination, caused the majority to find that he was not the author of the petition. With this finding I most strongly disagree.

The witness testified that he had completed a three year commercial high school course. Although there was no evidence on the point, I suggest it is common knowledge that in such educational courses a heavy emphasis is placed on the subjects of business English and the writing of business letters. Although no evidence was

adduced, I also suggest that it is usual in the preparation of a formal document to draft and re-draft, to define and re-define the language used, so that the net result is a polished document utilizing language which is not the usual conversational language of the author. Accordingly the wording of the petition is, in my opinion, well within the educational competence of the witness, and in the complete absence of any evidence to the contrary, I accept his direct and uncontradicted testimony that he was the author of the petition, the body of which reads as follows:

'We are all of the employees of Faultless Casters Limited, for whom application for certification as bargaining agent has been made by International Woodworkers of America.

We have considered our position with respect to that Union and with respect to the Company, and respectfully request the Board that certification not be granted to that Union.'

With respect to the inability of the witness to approximate the exact language of the petition, in my view, it is unreasonable to expect he should be able to do so. The witness is an older person. He appeared visibly nervous throughout the hearing. As has been stated earlier the petition is a formal document and is not normally worded in conversational language. The petition was prepared prior to February 11th and the hearing was not held until February 20th. While it is true the witness was given the document at the hearing for purposes of identification and was afforded the opportunity to read it, he did not in my opinion take the time to read it, but as is usual in such cases, on a casual glance at the paper and on recognizing the signatures affixed to it, he acknowledged that he had seen the document before. Further, the reading of the petition by the chairman had taken place before the witness was asked to testify and before he had been subjected to a somewhat lengthy examination concerning its origination and circulation.

At no time, either before or at the hearing, did the applicant trade union allege that management played any part in the origination or circulation of the petition. Accordingly, I find that the petition, which was signed by all of the employees in the bargaining unit sought by the applicant, clearly weakens the evidence of membership submitted by the applicant so as to make it necessary to seek the confirmatory evidence of a representation vote.

But even if one accepts the majority finding that

the witness was not the author of the petition, in the complete absence of some evidence from which a logical inference may be drawn, it does not necessarily and logically follow that such help as he did receive must have been supplied by a member or agent of management. In the instant case there is absolutely no evidence, nor in fact any allegation, from which the inference can be drawn that management played any part in the origination or circulation of the petition. To the contrary, the witness told the Board that the reason the petitioners now objected to the certification of the applicant International Woodworkers of America was that they worked in the metal rather than the woodworking trade and intended in due course to seek representation by the Steel Workers Union. Such a statement, in my view, is a clear indication that their action in this matter was to serve what they consider to be their own best interests and not to support a presumed desire of management, to avoid dealing with a union. In these circumstances to deny the petition and thus refuse to order a representation vote, is to proceed on mere suspicion or conjecture totally unsupported by the evidence. Thus even if it had been established by the evidence that the witness was not the author of the petition, in the absence of some evidence from which the inference could reasonably be drawn that such help must have been supplied by management, I would have given effect to the petition and ordered a representation vote."

REQUEST FOR RECONSIDERATION OF BOARD DECISION

2501-61-R: United Steelworkers of America (Applicant) v. The International Nickel Company of Canada, Limited (Respondent) v. Sudbury Mine, Mill and Smelter Workers' Union, Local 598 (Intervener) v. Sudbury Mine, Mill & Smelter Workers Local 598, of the International Union of Mine, Mill & Smelter Workers (Intervener) v. International Union of Mine, Mill & Smelter Workers (Intervener). (GRANTED OCTOBER 1962).

The Board further endorsed the Record as follows:

"On February 19, 1963, Mr. Malcolm Robb, Q.C., acting as " counsel for John Nelligan, solicitor of Ottawa, who is solicitor for Sudbury Mine, Mill and Smelter Workers Union, Local 598," submitted to the Board an application for reconsideration by the Board of "the decisions, orders, directions, declarations and rulings made by it in [this] matter on the following dates, namely: January 17th, 1962, February 1st, 1962, June 4th, 1962, September 14th,

1962, October 15th, 1962, and November 15th, 1962, and to vary and revoke such and specifically, to revoke the certificate of the Ontario Labour Relations Board dated October 15th, 1962, certifying United Steelworkers of America as bargaining agent of all employees of International Nickel Company of Canada Limited and individuals employed by the International Nickel Company of Canada Limited with respect to the classifications therein specified and for a re-hearing of the applications therein involved...' The "signature" on this application reads "Sudbury Mine, Mill and Smelter Workers' Union, Local 598. Per: Thomas P. Taylor, President". To place this application for reconsideration in its proper perspective, it is necessary to trace the course of the proceedings in this matter from the date of the making of the application to the present time, and particularly the role played and the extent of the participation by the several interveners in the proceedings.

On November 28, 1961, the United Steelworkers of America applied to this Board to be certified as bargaining agent for certain employees of the International Nickel Company of Canada Limited and requested that a pre-hearing representation vote be taken. In due course, three interventions were filed. One intervention was filed by an entity that described itself in its intervention as "Sudbury Mine, Mill and Smelter Workers Union Local 598", the same description as that of the applicant in the present proceedings. This intervention was made over the signature of Donald Gillis who identified himself as "President". (This intervener is hereinafter referred to as intervener #1.) Another intervention was filed by an entity that described itself in its intervention as Sudbury Mine, Mill & Smelters Workers Local 598 of the International Union of Mine, Mill & Smelter Workers. This intervention was made over the signature of Thomas Peter Taylor who identified himself as "Duly authorized agent". Thomas P. Taylor who signed the present request for reconsideration and Thomas Peter Taylor who signed the intervention here under discussion would appear to be the same person. (This intervener is hereinafter referred to as intervener #2.) A third intervention was made by an entity that described itself as the "International Union of Mine, Mill & Smelter Workers". (This intervener is hereinafter referred to as intervener #3.) In addition, opposition to the taking of a pre-hearing representation vote was registered by a group of over 6000 employees. The solicitor who submitted the documentary evidence of the desires of these employees

(Mr. Aubrey Golden) also filed the intervention of intervenor #3. The name of the trade union that was a party to the agreement with the International Nickel Company of Canada at the relevant time, as that name appears in the description of the parties at the commencement of the collective agreement, is "Sudbury Mine, Mill and Smelter Workers' Union, Local 598". At the end of the agreement, where the signatures for the parties are affixed, the name of the union is given as 'Sudbury Mine, Mill and Smelter Workers' Union, Local 598, affiliated with the International Union of Mine, Mill and Smelter Workers'. The interveners and the group of employees were represented by various counsel at the several stages of the lengthy proceedings in this case.

The usual practice of the Board on a pre-hearing representation vote application is to deal with the objections to the validity of the application for certification after the vote is taken. See in this connection, the judgment of McRuer C.J. in In re Northern Electric Company, Limited et al. (April 23, 1963). However, in the circumstances of this case the Board listed the application for certification of United Steelworkers of America for hearing on December 21, 1961, to afford to intervenor #2 and intervenor #3 and to the objecting group of employees an opportunity to show cause why a pre-hearing representation vote should not be taken. At this hearing Messrs. S. L. Robins, Q.C. and S. A. Schiff appeared on behalf of intervenor #1, Mr. J. P. Nelligan appeared on behalf of intervenor #2, Mr. K. A. Smith, President of intervenor #3, appeared on behalf of that intervenor, and Messrs. M. Robb, Q.C., and Claude Thomson appeared for the group of employees. Having considered the representations of counsel and the representative of intervenor #3, the Board, on January 17, 1962, for reasons given in writing, held that the request of intervenor #2 and intervenor #3 and the group of objecting employees, that "a pre-hearing representation vote should not be taken at this time, in so far as it rests on the allegations [made by these two interveners and the objecting group of employees]", should be denied.

Under date of January 22, 1962, Mr. Golden, acting for the group of objecting employees, sent a telegram to the Board requesting "Reconsideration of Board's Decision of January 17, 1962". No hearing was held on this request but it was dealt with by the Board in written reasons given on February 1, 1962. In that decision, the Board, after considering the request of

Mr. Golden, clarified its decision of January 17, as follows:

...it was our intention to hold that the opportunity for the objectors to lead evidence concerning the allegations in the documents submitted by them and set out in paragraph 3 of the Board's decision of January 17, 1962 and in the accompanying letter from their solicitor would follow and not precede the taking of the pre-hearing representation vote. Needless to say, to ensure that any rights they may have would not be prejudiced, the ballot boxes would have to be sealed.

The Board, in its decision of February 1, 1962, then went on to direct that a pre-hearing representation vote be taken.

There is nothing in the instant application for reconsideration or in the submissions made by Mr. Robb that touches on the principles that the Board should, or did, apply in directing the taking of the pre-hearing representation vote in this matter. In these circumstances, there is nothing before us that would warrant our reconsidering the decisions of the Board dated January 17, and February 1, 1962. It is not without significance that more than a year has elapsed between the time when these decisions were issued and the date when the instant request for reconsideration was filed with the Board.

On March 23 and April 3, 1962, the Board held hearings to entertain representations in respect of three motions made by Mr. David A. Lewis, Q.C., counsel for the United Steelworkers of America, as to the conduct of the proceedings on the allegations made by intervenor #2 and intervenor #3 and the group of objecting employees. On both occasions Mr. J. P. Nelligan appeared for intervenor #2 and Mr. A. Golden for intervenor #3. Mr. S. L. Robins, Q.C., appeared for intervenor #1 on March 23; on April 3, Mr. S. Schiff appeared for intervenor #1. At the hearing on March 23, Mr. Golden informed the Board that Mr. Robb had appeared as counsel on his behalf at the hearing of December 21 and, since that date, the group of employees had decided that, since they were all members of Local 598 of the International Union of Mine, Mill & Smelter, they would "swing their support" behind Local 598 as represented by Mr. Taylor and that henceforth Mr. Nelligan, who was counsel for Mr. Taylor would be appearing on behalf of the group of

objecting employees. Mr. Nelligan confirmed to the Board that this was the position of the objecting employees. The three motions made on behalf of the United Steelworkers of America were denied.

On April 30, May 1 and 2, hearings were held in Toronto and on May 14 and 15, hearings were held in Sudbury on the allegations made by intervener #2, intervener #3 and the objecting group of employees concerning the activities of the United Steelworkers of America. These allegations, as we pointed out in our decision of June 4, 1962, fell under three heads:

- (i) that there was misrepresentation to the employees of the respondent of the significance of their signing membership cards in the applicant;
- (ii) that the employees' signatures on some of the membership cards submitted by the applicant were forged; and
- (iii) that some employees signed cards but did not pay dues or fees on their own behalf in accordance with the Board's policy in that regard.

At the Toronto hearings, intervener #1 was represented by Messrs. Robins and Schiff, intervener #2 by Mr. Nelligan and intervener #3 by Mr. Golden. At the hearings in Sudbury, intervener #1 was represented by Mr. Schiff and intervener #2 and intervener #3 by Messrs. Nelligan and Golden, respectively. At the commencement of the hearing on April 30, Mr. Nelligan informed the Board that he had reviewed the position taken by Mr. Golden, that the interests of his client were virtually identical with those of Mr. Golden's client, that he would associate himself with Mr. Golden and that he would act as "joint counsel" with Mr. Golden. Mr. Nelligan and Mr. Golden proceeded in that fashion throughout the hearings referred to above at Toronto and at Sudbury. As we pointed out in our decision of June 4, 1962, in so far as the hearings at Toronto were concerned, "counsel for all parties were afforded an opportunity to call witnesses, to examine and cross examine them and to present argument on all phases of the allegations". In so far as the hearings at Sudbury were concerned, "counsel for all parties had an opportunity to cross examine witnesses summoned by the Board, to submit confirmatory and rebuttal testimony, and to present argument".

On June 4, 1962, the Board issued a unanimous decision directing the Registrar to cause the ballots cast in the representation vote held on February 27 and 28 and March 1 and 2, 1962, to be counted as soon as the necessary arrangements for the count could be made. In the written reasons for the decision, the Board dealt inter alia with the aspect of the case to which the present request for reconsideration particularly applies, i.e., the first head of the allegations set out above, "that there was misrepresentation to the employees of the respondent of the significance of their signing membership cards in the [United Steelworkers of America]". It was not until February 19, 1963, that the instant application for reconsideration was received by the Board in which in substance, as we shall see, the Board is asked to reconsider its decision of June 4, 1962, in so far as this aspect of the case is concerned. Indeed it was not until February 19, 1963, more than 8 months after the decision of June 4 was issued that there was any suggestion from any of the parties that the Board should reconsider the basis upon which the Board proceeded on this aspect of its decision.

In sequence of time, we should deal at this stage with hearings held at the end of June and the early part of July, 1962, to hear evidence on the allegations that the United Steelworkers of America had infringed the Board's "no propaganda" rule and as to the regularity of the count of the ballots cast in the pre-hearing representation vote. However, in our opinion, a clearer picture of the course of the proceedings will be provided if we pass over these hearings at this time and turn to a request made, under date of June 26, 1962, by Mr. Robb, at that time acting as solicitor for intervener #3, that the Board reconsider its decision of June 4, 1962. In the last-mentioned decision, as we have already pointed out, the Board dealt with the first head of the allegations of intervener #2 and intervener #3 and the objecting group of employees. In that decision, the Board also dealt with the second and third heads of the allegations of these interveners and objectors, namely the "non sign" and "non pay" allegations. Mr. Robb in his request of June 26 sought leave of the Board to adduce certain additional evidence, chiefly events that came to light on an application for certification by United Steelworkers of America with respect to employees of the Falconbridge Nickel Mines Limited, which, he submitted, had a bearing on the second and third heads of the allegations referred to above. The request was accompanied by an affidavit

of Mr. Lukin Robinson, Research Director of intervenor #3. The Board notified Mr. Robb that, if he wished to make representations in support of his request for reconsideration, he should do so in writing. Mr. Robb's written submissions were filed with the Board on July 31, 1962, and, on August 2, Mr. Robb filed a document entitled "Reference to Labour Board Rulings" which he suggested might assist the Board. The other parties to the proceedings were afforded an opportunity of replying to or commenting on the submissions of Mr. Robb. Under date of August 8, Mr. Nelligan wrote to the Board making "comments with respect to the submissions filed by Mr. Robb". He stated in the letter that he was making these submissions "on behalf of Sudbury Mine, Mill and Smelter Workers' Union, Local 598". It should be noted that under date of July 6, Mr. T. P. Taylor, who identified himself, at that time, as "President, Mine Mill and Smelter Workers Union Local 598" wrote to the Board on the stationery of "Mine Mill and Smelter Workers Union Local 598" to draw the Board's attention to the fact that, at the last hearing with respect to the certification application, no one appeared on behalf of intervenor #1. His letter goes on as follows:

As the former officers' term of office expired on June 30th, 1962, a new slate of officers has now been elected and a resolution passed directing that the new President, Mr. T. P. Taylor is to appear on behalf of Local 598, at all future hearings of the Board. The Local's solicitor Mr. John P. Nelligan will also appear on behalf of the Local.

Written representations were also made by counsel for the United Steelworkers of America. After considering all these representations, the Board determined that it should hold an oral hearing for the purposes set out in a letter which accompanied the notice of hearing issued by the Registrar and which read as follows:

At this hearing, counsel for the intervenor, International Union of Mine, Mill & Smelter Workers, will be afforded an opportunity of indicating the nature, type and scope of the evidence that he desires to adduce in support of his request and the action that he proposes the Board should take in the light of such evidence. Counsel for the other parties will be afforded an opportunity to make representations as to whether, having regard to such

evidence and the action that counsel for the International Union of Mine, Mill & Smelter Workers may propose be taken by the Board, the Board should entertain the request for reconsideration.

At the hearing held on September 6, 1962, Mr. Claude Thomson appeared for intervenor #3 and Mr. Nelligan marked the appearance sheet to show that he was appearing for intervenor #1 as well as for intervenor #2. Both Mr. Thomson and Mr. Nelligan presented argument. On September 14, 1962, the Board issued a unanimous decision setting out the principles that it held to be applicable to a request for leave to submit "after discovered" evidence, and then went on as follows:

If we were to reconsider our decision in this case on the basis of the evidence proposed to be adduced, we would have to go so far beyond the principles which the courts, with their lengthy experience in matters of this sort, have evolved, that there would be practically no finality to Board decisions where it could be shown that an organizer who engaged in improper conduct in one case had participated in organizational campaigns in other cases in which a decision has been issued. In view of our findings and in view of the considerations set out above, we do not deem it advisable to reconsider our decision of June 4, 1962, in this matter and the request for reconsideration is denied.

There is nothing in the instant application for reconsideration except for one paragraph - #88 - that has reference to the issues dealt with in the Board's decision of September 14, 1962, as to whether the Board should have entertained evidence of what occurred in the Falconbridge situation. The paragraph referred to outlines circumstances that were covered in the request for reconsideration made on July 26. In addition, over 5 months elapsed between the date of that decision and the date when the instant application was made and, at no time throughout that period, did the instant applicant for reconsideration challenge the basis upon which the Board proceeded in its decision of September 14 denying the request for reconsideration that had been made on July 26, 1962.

We shall now return to the hearings held on June 27, 28 and 29 and July 4 and 19, 1962, at which

evidence was heard and argument was presented concerning the representation vote. In so far as intervenor #1 is concerned Messrs. Robins and Schiff appeared on its behalf on June 27, and Mr. Schiff appeared on June 28. No appearance for intervenor #1 was recorded for June 29. On July 4, Mr. Robb, counsel for intervenor #3, requested that the Board take note of the fact that no one appeared to represent "Local 598 as such". At the hearing on July 19, Mr. R. Poirier was present and he informed the Board that he had no argument to present "for Mr. McNabb". Mr. Taylor alone appeared on behalf of intervenor #2 on June 27, 28 and 29; on July 4 and 19, Mr. Nelligan marked the appearance sheet to show that he was appearing on behalf of intervenor #1 and intervenor #2. Mr. Robb appeared for intervenor #3 throughout these hearings and Mr. Golden was present with Mr. Robb on the last 4 days of the hearings.

On October 15, the Board (Board member R. W. Teagle dissenting) issued a lengthy decision overruling the objections filed by intervenor #2 and intervenor #3 to the representation vote. The Board thereupon certified the United Steelworkers of America as the bargaining agent for the employees of International Nickel Company of Canada Limited.

On October 17, Mr. Nelligan wrote to the Board on behalf of intervenor #1 and intervenor #2 requesting that the Board reconsider its decision of October 15. A letter from Mr. Golden, dated the same day as that of Mr. Nelligan, states that he fully adopted the entire contents of Mr. Nelligan's letter on behalf of his client, intervenor #3. On November 15 the majority of the Board issued the following decision:

Application under subsection 1 of section 79 of The Labour Relations Act that the Board reconsider its decision of October 15th in this matter.

Upon due notice to all parties, extensive hearings were held by the Board in this matter. At these hearings every opportunity was afforded to the parties to present both evidence and argument on every aspect of this case.

In the course of the argument, counsel for one or other of the parties touched on all the "grounds upon which this application [for reconsideration] is made".

In reaching its conclusions the Board gave

careful consideration to all of the evidence and every aspect of the argument presented to it. All the issues dealt with in the reasons for decision of the majority as well as in the reasons for decision of Board Member R. W. Teagle, who dissented, were fully canvassed by the Board before the decision of October 15, 1962, was issued. Accordingly, we do not consider it advisable for the Board to reconsider its decision of October 15, 1962.

Mr. Teagle concurred in the decision of the majority and said:

Without derogating from the opinions expressed in my dissent of October 15, 1962, I concur in the conclusion on the request for reconsideration arrived at by my colleagues. There are no grounds set out in the request for reconsideration that would warrant the request being granted.

Nothing in the instant application for reconsideration has reference to the issues dealt with in the Board's decision of October 15, as to the regularity of the representation vote, or to the grounds upon which the Board in its decision of November 15 rested its refusal to reconsider the decision that it issued on October 15. In sum, counsel has indicated no ground for reconsideration of this decision.

The instant request for reconsideration was forwarded to the Board by Mr. Robb on behalf of Mr. Nelligan who, as we pointed out earlier, is now acting as solicitor for intervener #1. This request consisted, as we have already pointed out, of a statement signed by Mr. Taylor, and comprised 53 pages of text and an appendix of 14 pages of orders made by the Supreme Court of Ontario in various proceedings between opposing factions in the International Union of Mine, Mill and Smelter Workers and Local 598 of that union. It sets out in great detail allegations of facts, all of which presumably Mr. Robb proposed to establish before the Board by testimony of witnesses. The Registrar, on instructions from the Board, notified Mr. Robb that he was entitled to make written representations as to the principles that the Board should apply in determining whether it should reconsider its decisions on the grounds set out in the request for reconsideration. Mr. Robb was also informed by the Registrar that it was the intention of the Board to make a decision on the

basis of the written representations of the parties as to whether the Board should reconsider its decisions and as to whether it should permit Mr. Robb to present the evidence that he was requesting the Board to entertain. Mr. Robb has now filed his written submissions, the other parties to the proceedings have had an opportunity to reply and Mr. Robb has filed a reply to the submissions made by the United Steelworkers of America. Mr. Robb submitted his last instalment of material in connection with this application under date of June 11, 1963.

As Mr. Robb pointed out in his submission, the language of the provision conferring power on the Board to reconsider its decisions is very wide. We are not unmindful of the fact, as Mr. Robb points out, that there is no appeal as such from the Board's decisions and that the Board ought to have that fact ever before it in determining whether it should or should not reconsider its decisions in any particular case. However, it could not seriously be contended that, because there is no appeal to the courts, a party has the right, upon request, to obtain unlimited reconsideration of any and every unfavourable decision rendered against it by the Board. It is obvious that some limitations must be placed in practice upon the generality of the relevant language of subsection 1 of section 79 if there is to be any finality to the Board's decisions. We are concerned here solely with the question whether a party should be permitted to adduce evidence before the Board after a decision has been rendered by the Board and it is our opinion that we ought to turn to the principles established by the courts for guidance in determining what course the Board should follow in such a situation.

Mr. Robb's request for reconsideration and the material he has filed in support of his request is open to two constructions:

- (i) that the Board should hear de novo all the testimony by which it is sought to establish the allegations set out in the application for reconsideration; or
- (ii) that the Board should hear evidence that has not so far been presented to the Board.

In so far as these allegations have already been dealt with in hearings before the Board, we cannot see any justification for re-hearing the evidence in support of them. It is obvious from the account of the course of

the proceedings set out above that, at every stage of the proceedings, the position and the views of those who opposed the application of the United Steelworkers of America were presented to the Board fully and forcefully by capable and experienced counsel. Lengthy testimony was adduced before the Board on practically every item set out in the application for reconsideration made on February 19, 1963. We are referring here to the statement signed by Mr. Taylor. Although this testimony was not adduced by intervenor #1 when it was under the direction of Mr. Gillis, the then president of Sudbury Mine, Mill and Smelter Workers, Local 598, and his associates, nevertheless Mr. Taylor, who is now the president of that local and spokesman for intervenor #1, was at all material times before the Board as the representative of intervenor #2 and he had throughout the proceedings the support and cooperation of the parent body of his organization, intervenor #3. The Board weighed all the evidence carefully and we fail to see how the weight given to the evidence adduced in support of Mr. Taylor's cause prior to the decision of June 4 could be affected by the particular position that Mr. Taylor occupied at that time. In so far as it is suggested that the testimony proposed to be adduced is new evidence, apart for the moment from any question as to the effect of what Mr. Robb refers to as "chicanery", it is our opinion that Mr. Robb's client must bring itself within the principles set out in the Board's decision of September 14, 1962, in this matter and in the Detroit River Construction Case, (1962) C.C.H. Canadian Labour Law Reports ¶16,260, C.L.S. 76-899. As was pointed out in the last-mentioned of these decisions, the minimum conditions that a party seeking to set aside a decision on the ground of newly discovered evidence must show, is (1) "that the alleged new evidence proposed to be adduced could not have been obtained by reasonable diligence before and presented at the hearing held for that purpose", and (2) "that there is a strong probability that the new evidence will have a material and determining effect on the decision sought to be set aside". See also in this connection Imperial Bank of Canada v. Latham and A. E. Burden Ltd. et al., (1963) 36 D.L.R. (2d) 486. There is for all practical purposes no newly discovered evidence in the material that Mr. Robb purposes to adduce other than the inferences that he suggests should be drawn by the Board from the disposition of certain proceedings in the Supreme Court of Ontario between the contending factions in the International Union of Mine Mill & Smelter Workers and in Local 498 of that union. The fact is that the actions

of Mr. Gillis and his associates involved in these proceedings were fully dealt with before the Board at the hearings held on April 30, and May 1 and 2, 1962. However that may be, the inferences that Mr. Robb suggests the Board ought to draw from the court proceedings must be looked at in the light of the principles upon which the Board's decision of June 4, 1962, was based and it should be noted that this decision was the unanimous decision of all three of the members of the division who composed the Board on that occasion. As we said in that case:

We turn now to the first head of the objectors' allegations, namely, that there was misrepresentation to the employees of the respondent of the significance of their signing "Steel" cards. The starting point for this allegation is that Gillis, the president of Sudbury Mine Mill and Smelter Workers Union, Local 598, from the very commencement of his term of office, had always maintained that it was the objective of his administration to affiliate Sudbury Mine Mill and Smelter Workers Union, Local 598, as a viable entity with the Canadian Labour Congress directly and not through the United Steelworkers of America. The objectors sought to establish that, for some time prior to the making of the instant application, Gillis knew that admission to the Canadian Labour Congress was barred to Sudbury Mine Mill and Smelter Workers Union, Local 598, that members of that local could become "affiliated" with the Canadian Labour Congress only by abjuring "Mine Mill" and becoming members of the United Steelworkers of America, and that he deliberately refrained from disclosing these facts to the members of the local. They contend that employees of the respondent company would not have signed "Steel" cards if they had known the true facts as to the terms of "affiliation" with the Canadian Labour Congress and also that there were grave doubts as to whether they would be able to retain the assets of Sudbury Mine Mill and Smelter Workers Union, Local 598 if they became part of the United Steelworkers of America. The objectors endeavoured to show that there was collusion between Gillis, on the one hand, and the applicant and the Canadian Labour Congress, on the other hand, not only in keeping the legal and trade union position from the employees but in leaving the

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial data. This section also covers the need for regular audits and the role of the accounting department in providing timely and accurate reports to management.

The second part of the document details the various methods used to collect and analyze financial data. It describes the process of gathering information from different sources, such as sales invoices, purchase orders, and bank statements. It also discusses the use of statistical tools and software to process this data and generate meaningful insights. The importance of data security and confidentiality is also highlighted in this section.

The third part of the document focuses on the implementation of financial controls and the establishment of a strong internal control system. It outlines the key components of such a system, including segregation of duties, authorization procedures, and regular monitoring. The document also discusses the role of the board of directors in overseeing the financial health of the organization and the importance of transparent reporting to stakeholders.

impression that Sudbury Mine Mill and Smelter Workers Union, Local 598, could be preserved intact as an entity within the United Steelworkers of America.

The issue before us here is not whether Gillis and his associates did or did not discharge faithfully their functions as officers of Sudbury Mine, Mill and Smelter Workers Union, Local 598, or whether their activities throughout the relevant period were or were not in violation of the constitution of the International Union of Mine, Mill & Smelter Workers. These are matters which lie within the jurisdiction of other tribunals, i.e., the Supreme Court of Ontario (where, we were informed, a number of actions are now pending) and, it may be, the appropriate authorities within the International Union of Mine, Mill & Smelter Workers. Nor are we called upon - except collaterally in considering the impact of statements and actions by "Steel" officers and officials on the minds of persons who signed "Steel" cards - to make a determination as to whether there was or was not some sort of "conspiracy" between the Gillis administration, on the one hand, and the applicant and the Canadian Labour Congress or either of them, on the other hand. The sole question we have to answer at this stage is, are we satisfied with the membership evidence produced by the applicant? In arriving at a conclusion on this point, we must of course take into account (a) any evidence presented to us that employees were in fact induced to sign cards and pay dues to the applicant through misrepresentation, on the part of the applicant, its officers and agents, as to the effect, in a material respect, of their so signing and paying, and (b) any evidence that the actions of the applicant, its officers and agents at the relevant times were such that there was a real likelihood employees were misled as to the effect, in a material respect, of their signing and paying.

On the evidence before the Board at that time, we found (a) that it was not established that any employee was in fact misled in any material respect, and (b) that the evidence was insufficient to warrant the Board drawing the inference that there was a real likelihood that employees were misled in a material respect by anything said or done by the United Steel Workers of

America or those for whom that union could properly be held responsible. In concluding our decision on that part of the case here under discussion, we said that "the evidence [did] no more than lead us to speculate as to the motives and reasons that may have induced particular persons to sign 'Steel' cards ... However that may be, speculation is not an adequate ground for holding that the membership cards filed by the applicant should be treated as invalid and doubts resting on speculation must surely be capable of resolution through a secret ballot wherein every employee is free to express his preference". Assuming for present purposes that we were to draw from the disposition of the court proceedings those inferences that the applicant for reconsideration submits we ought to draw, the fact remains that these inferences do not go to the root of the principles that we applied in arriving at our decision of June 4; they would not show that the employees were misled as to the effect of their signing membership cards in the United Steelworkers of America.

Mr. Robb suggests that one of the grounds upon which the Board might reconsider a decision is "where there has been abuse of the processes of the Board, a chicanery in use of the Board's rules and forms and methods, perhaps not falling within Section 44 [of the Act]". The Oxford English Dictionary defines "chicanery" as "legal trickery, ... dishonest artifice of law". It may be that, if by chicanery in the sense of this definition, a party has kept from the Board significant and relevant evidence and has made it impossible for an interested person to bring such evidence to the attention of the Board, such an interested person ought to be afforded an opportunity of presenting it to the Board even after a decision has been reached. However, it does not follow, even assuming that "chicanery" can be established in a case, that there is automatically a right in the party affected to call for the re-opening of the case. "Chicanery" is a type of fraud in the broad sense and it is convenient at this point to deal with the effect of fraud in the reconsideration of a decision, since Mr. Robb relies on that ground as well. In Johnston v. Barkley, (1905) 10 O.L.R. 724, Street J. said (at pp. 728-9):

It is obviously necessary in order to prevent an abuse of the right to have a judgment reopened upon the ground of fraud,

that the fraud should be that of the party who has obtained the judgment; that it should be clearly made out; and that it should have undoubtedly been at the foundation of the decision which has been attacked ... (emphasis added)

It seems to us that the principle enunciated in this case should be applied by the Board in the exercise of its discretion in the situation here under consideration. Even assuming for present purposes, but of course without making any finding on the point, that the United Steelworkers of America and intervenor #1 were guilty of some sort of chicanery in the presentation of the case up to the time when Mr. Nelligan commenced to represent that intervenor, the fact remains, as we have already pointed out, that counsel for intervenor #2 and intervenor #3 and the objecting employees had every opportunity to, and they did, adduce evidence on most of the allegations in Mr. Taylor's statement. For the reasons set out above, there is no need for us to deal further with the evidence that has already been heard by the Board. That leaves for consideration (i) the allegations of facts that were not previously presented to the Board and that, according to the application for reconsideration, became available to Mr. Taylor only after his election to the presidency of intervenor #1, and (ii) the submissions as to the inferences to be drawn from the proceedings before the Supreme Court of Ontario. Even in the case of fraud, as Street J. pointed out in Johnston v. Buckley, supra, the fraudulent evidence "should have undoubtedly been at the foundation of the decision which has been attacked". In so far as newly discovered evidence in these circumstances is concerned, this is in essence much the same test as that applicable to newly discovered evidence in other situations, a matter with which we dealt earlier. As we said above in that connection, the evidence that Mr. Robb proposes to present does not go to the root of the principles that we applied in arriving at our decision of June 4; it does not tend to show that the employees were misled as to the effect of their signing membership cards in the United Steelworkers of America. In addition, we cannot see how it can possibly be said that, by legal trickery or fraud, evidence was kept from the Board which goes to the basic issue--that of misrepresentation.

Having regard to the foregoing conclusions, it becomes unnecessary for us to consider the other grounds for reconsideration suggested by Mr. Robb. Even if we found in a proper case that they did constitute adequate

grounds for reconsideration, nevertheless as we have already pointed out, there is nothing in the allegations made by Mr. Taylor that would establish misrepresentation.

In all the circumstances of this case, including the time that has elapsed between the dates when the several decisions were issued and the time when this application was submitted to the Board, we do not consider it advisable to reconsider, on the basis of the material presently before us, our decisions of January 17, February 1, June 4, September 14, October 15 and November 15, 1962.

Board member R. W. Teagle concurs in the reasoning and conclusions set out above "without derogating from the opinions expressed in [his] dissent of October 15, 1962".

CORRECTION

In the June 1961 Monthly Report of The Labour Relations Board the disposition of The Ontario Labour Relations Board in File No. 5658-62-R was incorrectly stated. The entry should have read:

5658-63-R: John C. Bresett (Applicant) v. International Union of United Brewery, Flour, Cereal, Soft Drink & Distillery Workers of America A.F.L.-C.I.O.-C.L.C. (Respondent) (DISMISSED) (71 employees).

(Re: Coco-Cola Limited,
Hamilton, Ontario)

Any inconvenience caused to the parties as a result of this error is regretted.

PART 2

| | | |
|----|--|-----|
| 1. | Applications and Complaints to the Ontario Labour Relations Board | S16 |
| 2. | Hearings of the Ontario Labour Relations Board | S16 |
| 3. | Applications and Complaints disposed of by the Ontario Labour Relations Board by Major Types | S17 |
| 4. | Applications Disposed of by the Ontario Labour Relations Board by Types and by Disposition | S18 |
| 5. | Representation Votes in Certification Applications Disposed of by the Board | S20 |
| 6. | Representation Votes in Termination Applications Disposed of by the Board | S20 |

TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

| | | Number of applications filed | | |
|------|---|------------------------------|-------------------------------|-------------------|
| | | July 1st 1963 | 4 months of fiscal year 63-64 | fiscal year 62-63 |
| I | Certification | 69 | 254 | 277 |
| II | Declaration Terminating Bargaining Rights | 5 | 30 | 22 |
| III | Declaration of Successor Status | 3 | 4 | 2 |
| IV | Conciliation Services | 108 | 482 | 511 |
| V | Declaration that Strike Unlawful | 16 | 22 | 24 |
| VI | Declaration that Lockout Unlawful | - | - | 4 |
| VII | Consent to Prosecute | 11 | 80 | 39 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 13 | 51 | 51 |
| IX | Miscellaneous | <u>2</u> | <u>4</u> | <u>8</u> |
| | TOTAL | <u>227</u> | <u>927</u> | <u>938</u> |

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

| | | Number | | |
|--|--|---------------|-------------------------------|-------------------|
| | | July 1st 1963 | 4 months of fiscal year 63-64 | fiscal year 62-63 |
| Hearings & Continuation of Hearings by the Board | | 89 | 368 | 456 |

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

| | Number of applications disposed of July 1st 4 months of fiscal year | | |
|--|--|------------|------------|
| | 1963 | 63-64 | 62-63 |
| I Certification | 65 | 285 | 296 |
| II Declaration Terminating Bargaining Rights | 5 | 41 | 24 |
| III Declaration of Successor Status | 1 | 3 | - |
| IV Conciliation Services | 103 | 496 | 499 |
| V Declaration that Strike Unlawful | 19 | 22 | 23 |
| VI Declaration that Lockout Unlawful | - | - | 3 |
| VII Consent to Prosecute | 5 | 69 | 29 |
| VIII Complaint of Unfair Practice in Employment (Section 65) | 10 | 52 | 52 |
| IX Miscellaneous | - | 2 | 4 |
| TOTAL | <u>208</u> | <u>970</u> | <u>930</u> |

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPES AND BY DISPOSITION

| Disposition | <u>July 1st 4 mos fiscal yr</u> | | | <u>July 1st 4 mos fiscal yr</u> | | |
|--|---------------------------------|--------------|--------------|---------------------------------|--------------|--------------|
| | <u>'63</u> | <u>63-64</u> | <u>62-63</u> | <u>'63</u> | <u>63-64</u> | <u>62-63</u> |
| <u>I Certification</u> | | | | | | |
| Granted | 50 | 203 | 200 | 1437 | 6402 | 5177 |
| Dismissed | 10 | 51 | 62 | 240 | 1495 | 3180 |
| Withdrawn | <u>5</u> | <u>31</u> | <u>34</u> | <u>44</u> | <u>367</u> | <u>730</u> |
| TOTAL | <u>65</u> | <u>285</u> | <u>296</u> | <u>1721</u> | <u>8264</u> | <u>9087</u> |
| <u>II Termination of Bargaining Rights</u> | | | | | | |
| Terminated | 10 | 37 | 19 | 70 | 756 | 452 |
| Dismissed | 3 | 12 | 4 | 20 | 404 | 104 |
| Withdrawn | <u>1</u> | <u>1</u> | <u>1</u> | <u>9</u> | <u>9</u> | <u>52</u> |
| TOTAL | <u>14</u> | <u>50</u> | <u>24</u> | <u>99</u> | <u>1169</u> | <u>608</u> |

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

- S19 - APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'ns disposed of
July 1st 4 mos fiscal year
1963 63-64 62-63

III Conciliation Services*

| | | | |
|-----------|------------|------------|------------|
| Referred | 96 | 473 | 446 |
| Dismissed | 3 | 10 | 10 |
| Withdrawn | <u>4</u> | <u>13</u> | <u>43</u> |
| TOTAL | <u>103</u> | <u>496</u> | <u>499</u> |

IV Declaration that
Strike Unlawful

| | | | |
|-----------|-----------|-----------|-----------|
| Granted | 2 | 2 | 6 |
| Dismissed | 3 | 3 | 7 |
| Withdrawn | <u>14</u> | <u>17</u> | <u>10</u> |
| TOTAL | <u>19</u> | <u>22</u> | <u>23</u> |

V Declaration that
Lockout Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | - |
| Dismissed | - | - | 3 |
| Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> |
| TOTAL | <u>-</u> | <u>-</u> | <u>3</u> |

VI Consent to
Prosecute

| | | | |
|-----------|----------|-----------|-----------|
| Granted | 2 | 19 | 9 |
| Dismissed | 1 | 3 | 5 |
| Withdrawn | <u>2</u> | <u>47</u> | <u>14</u> |
| TOTAL | <u>5</u> | <u>69</u> | <u>28</u> |

*Includes applications for conciliation services re unions
claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number of Votes | | |
|----------------------------------|-----------------|-------------|-------------------|
| | July 1st 1963 | 4 mos 63-64 | fiscal year 62-63 |
| <u>*Certification After Vote</u> | | | |
| pre-hearing vote | 2 | 8 | 13 |
| post-hearing vote | 3 | 25 | 8 |
| ballots not counted | - | - | 2 |
| <u>Dismissed After Vote</u> | | | |
| pre-hearing vote | 1 | 6 | 9 |
| post-hearing vote | 5 | 25 | 22 |
| ballots not counted | - | 1 | 1 |
| TOTAL | <u>11</u> | <u>65</u> | <u>55</u> |

*Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number | | |
|-------------------------------|---------------|-------------|-------------------|
| | July 1st 1963 | 4 mos 63-64 | fiscal year 62-63 |
| *Respondent Union Successful | - | 5 | 4 |
| Respondent Union Unsuccessful | <u>3</u> | <u>16</u> | <u>5</u> |
| TOTAL | <u>3</u> | <u>21</u> | <u>9</u> |

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



AUGUST 1963

ONTARIO LABOUR RELATIONS BOARD

CASE LISTINGS AUGUST 1963

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING AUGUST 1963

Bargaining Agents Certified During August
No Vote Conducted

4472-62-R: Toronto Newspaper Guild, Local 87, American Newspaper Guild (Applicant) v. The Globe and Mail Limited (Respondent).

Unit: "all employees in the circulation department of the respondent in the Province of Ontario save and except Acting Circulation Manager, City Circulation Manager, Country Circulation Manager, Assistant City Circulation Manager, Assistant Country Circulation Manager, Office Manager of the Circulation Department, City Supervisors, Country Supervisors, Branch Managers, City District Sales Representatives, Country District Sales Representatives, District Sales Representatives, Assistant District Sales Representatives, confidential secretaries to the Acting Circulation Manager, the City Circulation Manager, the Country Circulation Manager and Office Manager of the Circulation Department, persons regularly employed for not more than 24 hours per week, and persons covered by a subsisting collective agreement."
(36 employees in the unit).

The Board endorsed the Record as follows:

"For the reasons given in writing a certificate will issue to the applicant."

Board Member, D.B. Archer dissented and said:

"I dissent in so far as the composition of the bargaining unit is concerned. For the reasons given in writing I would have enlarged the bargaining unit to include all the classifications in dispute."

On August 22, 1963 the Board further endorsed the Record as follows:

"With respect to the request of the respondent that the Board amend its description of the bargaining unit in its decision dated July 5, 1963, in this matter, it is pointed out that it is not the policy of the Board to exclude managerial classifications not in existence at the date of the making of the application. In this particular case all the

managerial classifications in the circulation department were dealt with on an individual basis after due consideration was given to the respondent's request for a general exclusionary clause. After duly considering the representations of the parties, the Board does not deem it advisable to amend its original decision on this point. The Board notes that it is open to the parties to seek relief under section 79(2) of The Labour Relations Act should any difficulty arise.

The respondent also requests the Board to reconsider its decision concerning its procedure in the instant case or, alternatively, order a representation vote. The matter was fully and ably argued before the Board at the first hearing in the case. The request for reconsideration in essence merely reiterates the arguments advanced at the hearing. After duly considering the representations of the parties made in connection with the request of the respondent on this second point, we are not prepared to amend or revoke our original decision.

In the result the request by the respondent is dismissed."

6348-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Ind-Ex Distributors Ltd. (Respondent) v. Canadian Transportation Workers' Union, No. 200, N.C.C.L. (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (22 employees in the unit).

The Board endorsed the Record in part as follows:

"The respondent company and the intervener union submit that this application is untimely because of an alleged collective agreement between them which was signed and became effective on April 24th, 1963 and remains in effect until April 24th, 1965. In the circumstances of this case, the onus is on the parties asserting that the agreement is a bar under section 5 of The Labour Relations Act to establish its validity

as a collective agreement within the meaning of section 1 (1) (c) of the Act. Having regard to the evidence adduced by the applicant and to the failure of the respondent and the intervener to present any evidence to the Board with respect to this agreement, we are unable to find that the agreement is a collective agreement within the meaning of the Act. It follows that the agreement does not create a bar to the present application."

6365-63-R: United Steelworkers of America (Applicant) v. Hopkins Steel Works Limited (Respondent).

Unit: "all employees of the respondent at Welland, save and except foremen, those above the rank of foreman and office staff." (24 employees in the unit).

The Board endorsed the Record in part as follows:

"We find on the evidence before us that the respondent employer participated in the origination and administration of the Employees' Association. In these circumstances, the agreement between the respondent and the Employees' Association effective from July 1st, 1962 until December 1st, 1963 is not a collective agreement under The Labour Relations Act. In the result the agreement does not constitute a bar to this application for certification."

The Board further endorsed the Record in part as follows:

"For the purposes of clarity the Board declares that draftsmen are included in office staff and are, therefore, excluded from the bargaining unit."

6399-63-R: General Truck Drivers, Local 879 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Applicant) v. H. Boehmer & Co. Limited (Respondent) v. Sheet Metal Workers' International Association, Local Union 562 (Intervener).

Unit: "all employees of the respondent at Kitchener, save and except foremen and persons above the rank of foreman, office and sales staff and persons covered by the subsisting collective agreement between Sheet Metal Workers' International Association, Local Union 562 and the respondent and the collective agreement between The General Truck Drivers' Union, Local 879, of Ontario, affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and the respondent." (9 employees in the unit).

6454-63-R: Teamsters Chauffeurs Warehousemen and Helpers Local Union No. 880 affiliated with International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers of America (Applicant) v. Pejay Packing Company Limited (Respondent).

Unit: "all employees of the respondent at Erieau, save and except foremen, persons above the rank of foreman and office staff." (26 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 275)

6548-63-R: Amalgamated Plant Guards, Local 1958, United Plant Guard Workers of America (Applicant) v. Walker Metal Products Limited (Respondent).

Unit: "all security guards of the respondent at its Windsor plant." (4 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 276)

6588-63-R: Local Union 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, AFL-CIO-CLC (Applicant) v. Doran's Northern Ontario Breweries Limited (Respondent) v. The Sudbury and District Workers' Union Local 902 of The International Union of Mine, Mill and Smelter Workers (Intervener).

Unit: "all employees of the respondent at its plant at Sudbury, save and except foremen, persons above the rank of foreman, office and sales staff." (34 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purpose of clarity, the Board declares that driver-salesmen are included in the bargaining unit."

The Board further endorsed the Record in part as follows:

"On April 1st, 1960 the respondent acquired the brewing operations formerly carried on by Sudbury Brewing & Malting Company Limited.

Subsequently, on September 1st, 1960 the intervener entered into a collective agreement with Sudbury Brewing & Malting Company Limited.

There is no evidence that the respondent is a signatory to the collective agreement between Sudbury Brewing & Malting Company Limited and the intervener nor is there any evidence that the respondent is a party to any collective agreement in writing with the intervener.

The intervener failed to file any documentary evidence of membership for any of the employees of the respondent.

The Board therefore finds that the intervener has no status in this matter."

6597-63-R: National Union of Public Employees (Applicant) v. The Salvation Army Grace Hospital (Ottawa) (Respondent) v., International Union of Operating Engineers, Local 869 (Intervener)

Unit: "all employees of the respondent at Ottawa, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, engineers, students hired for the school vacation period and persons covered under a subsisting collective agreement." (46 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity the Board declares that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians."

6600-63-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Bellite Construction Limited (Respondent).

Unit: "all carpenters and carpenter's apprentices of the respondent employed at or working out of the City of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 276)

6612-63-R: Trenton Construction Workers Association, Local No. 52, Affiliated with the Christian Labour Association of Canada, (Applicant) v. Miron-Lassing and Associates Ltd. (Respondent).

Unit: "all employees of the respondent in Prince Edward County and in the Townships of Lake, Tudor, Grimsthorpe, Marmora, Madoc, Elzivir, Rawdon, Huntingdon, Hungerford, Sidney, Thurlow and Tyendinaga in the County of Hastings and in the Townships of Percy, Seymour, Cramahe, Brighton and Murray in the County of Northumberland, save and except foremen, persons above the rank of foreman and office staff." (18 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant alleges that the application is one falling within section 92 of The Labour Relations Act. At the hearing in this matter the applicant did not adduce any evidence to show that it is a trade union that according to established trade union practice pertains to the construction industry. In the circumstances the Board is unable to find that the application is one falling within section 92 of The Labour Relations Act."

6630-63-R: Christian Trade Unions of Canada (Applicant) v. Habs Wood Products (Respondent).

Unit: "all employees of the respondent in the Township of Saltfleet, save and except foremen, persons above the rank of foreman and office staff." (2 employees in the unit).

6640-63-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Surety Construction Co. Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

6644-63-R: International Hod Carriers' Building and Common Laborers' Union of America, Local 837, Hamilton (Applicant) v. George Hanes and Son (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6645-63-R: The Bricklayers' Masons, Plasterers International Union of America (Applicant) v. George Hanes and Sons (Respondent).

Unit: "all bricklayers in the employ of the respondent in the County of Welland, in the County of Lincoln excepting therefrom the Townships of North and South Grimsby and Caistor, and in the Townships of Moulton and Dunn in the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant has filed with the Board a collective agreement signed by three contractors covering the area it is seeking in this application. This area corresponds to the geographical jurisdiction of the three locals of the applicant in the Niagara Peninsula. In these circumstances, but bearing in mind that the Board's present policies may be reviewed at a later date (see Andeen Construction Limited, O.L.R.B. Monthly Report, November 1962, p. 295), the Board further finds that all bricklayers in the County of Welland, in the County of Lincoln excepting therefrom the Townships of North and South Grimsby and Caistor, and in the Townships of Moulton and Dunn in the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6657-63-R: United Brotherhood of Carpenters & Joiners of America, Local Union 2173 (Applicant) v. Wolfond Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6659-63-R: International Hod Carriers Building and Common Labourers Union, Local # 506 (Applicant) v. McMinn Construction (Respondent).

Unit: "all construction labourers in the employ of the respondent at the City of Owen Sound and in the Townships of Sarawak, Derby and Sydenham in the County of Grey, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6676-63-R: International Hod Carriers Building and Common Labourers Union, Local # 1059 (Applicant) v. Graham & Graham Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Oxford, Perth, Huron, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (20 employees in the unit).

6680-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Mad Hatter Snack Food Division, Federal Farms Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and office staff." (9 employees in the unit).

6684-63-R: National Union of Public Service Employees (Applicant) v. Lady Minto Hospital (Respondent) .

Unit: "all employees of the respondent at its hospital in Cochrane, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, department heads, foremen, persons above the rank of department head or foreman, chief engineer, office staff, persons regularly employed for not more than twenty-four hours per week and students employed for the summer vacation period." (89 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

For the purposes of clarity, the Board declares that the bargaining unit includes certified nursing assistants."

6685-63-R: Amalgamated Lithographers' of America Local 42 Hamilton, Ontario (Applicant) v. Brant Litho Limited (Respondent).

Unit: "all lithographers, their apprentices and helpers in the employ of the respondent at Brantford, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6686-63-R: Shell Oakville Refinery Employees Council (Applicant) v. Shell Canada Ltd. (Respondent).

Unit: "all employees of the respondent at its refinery at Oakville, save and except shift supervisors, foremen, those above the rank of shift supervisor and foreman, office staff and students employed for the school vacation period."
(72 employees in the unit).
(AGREEMENT OF THE PARTIES).

6694-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wolfond Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the cities of Kitchener and Waterloo and all of the Township of Waterloo excepting that portion of Township lying South of a line commencing from the Junction of Waterloo Wellington Counties boundary and 13A Kitchener suburban road; Thence along 13A Kitchener suburban Road to its junction with County Road 13; Thence travelling in a South-Westerly direction along County Road 13 to its junction with the 401 Highway; Thence travelling along Highway 401 to its junction with County Road No. 6; Thence along County Road 6 Westerly to the end of Waterloo Township, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

The Board endorsed the Record in part as follows:

"The applicant seeks certification for an area covering the cities of Kitchener and Waterloo and part of the County of Waterloo. In support of its application, the applicant filed one collective agreement the scope clause of which covers the cities of Kitchener and Waterloo and part of the County of Waterloo. All other relevant current collective agreements on file with the Board cover the area of the Cities of Kitchener and Waterloo and part of the township of Waterloo.

In these circumstances the Board therefore further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the cities of Kitchener and Waterloo and all of the Township of Waterloo excepting that portion of Township lying South of a line commencing from the Junction of Waterloo Wellington Counties boundary and 13A Kitchener suburban road; Thence along 13A Kitchener suburban Road to its junction with County Road 13; Thence travelling in a South-Westerly direction along County Road 13 to its junction with the 401 Highway; Thence travelling along Highway 401 to its junction with County Road No. 6; Thence along County Road 6 Westerly to the end of Waterloo Township, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining.

It must be borne in mind that the areas granted by the Board in its recent decisions in the construction industry cases, do not represent the final thinking of the Board on this matter. As we have pointed out in a number of cases our current policies must be regarded as only of an interim nature. (See Abel Construction Co. Ltd. General Contractors, file number 6051-63-R and Unicrete Construction Limited, file number 6052-63-R)."

6695-63-R: Hotels, Clubs, Restaurants, Taverns Employees Union Local 261 Affiliated with A.F. of L., C.I.O. and C.L.C. (Applicant) v. Laurential Club Incorporated (Respondent).

Unit: "all employees of the respondent at Ottawa, save and except manager and office staff." (19 employees in the unit).

6699-63-R: International Hod Carriers Building and Common Labourers Union, Local # 1081 (Applicant) v. Ball Brothers Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (14 employees in the unit).

The Board endorsed the Record in part as follows:

"It must be borne in mind that the areas granted by the Board in its recent decisions in the construction industry cases, do not represent the final thinking of the Board on this matter. As we have pointed out in a number of cases our current policies must be regarded as only of an interim nature. (See Abel Construction Co. Ltd. General Contractors, file number 6051-63-R and Unicrete Construction Limited, file number 6052-63-R)."

6714-63-R: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Boreal Equipment Contractors Limited (Respondent).

Unit: "all employees of the respondent at its sawmill at Port Arthur, save and except foremen, persons above the rank of foreman and office staff." (22 employees in the unit).

6715-63-R: International Hod Carriers Building and Common Labourers Union of America, Local 837 Hamilton, Ontario (Applicant) v. Mike Marcello (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Lincoln, Welland and Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

The Board endorsed the Record in part as follows:

The respondent in its Reply states that the employees do not wish to be members of the applicant and submits that there should be a representation vote.

Although requesting a hearing in the Reply, the solicitor for the respondent subsequently informed the Board that no hearing was desired and that the only submission the respondent wished to make was as outlined above.

The documentary evidence filed by the applicant makes it clear that sixty per cent of the employees are members of the applicant. Although given an opportunity to do so, none of the employees filed a statement of desire to make objections against the application. There is no evidence before the Board of improprieties or irregularities in connection with the evidence of membership. In these circumstances and having regard to the provisions of section 7 of The Labour Relations Act, the Board does not deem it necessary to seek confirmatory evidence of the wishes of the employees by means of a representation vote."

6716-63-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Refinery Engineering Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

6717-63-R: The Bricklayers, Masons and Plasterers International Union of America, Local No. 3 Guelph, Ontario, (Applicant) v. Ball Brothers Limited (Respondent).

Unit: "all bricklayers, bricklayer apprentices, stone masons and stone mason apprentices in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 279)

6718-63-R: The Bricklayers, Masons and Plasterers International Union of America, Local No. 3 Guelph Ontario (Applicant) v. Gordon Hauser Construction Limited (Respondent).

Unit: "all bricklayers, bricklayer apprentices, stone masons and stone mason apprentices in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa in the County of Wellington save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

(FOR REASONS GIVEN IN BALL BROTHERS LIMITED, FILE NO. 6717-63-R, AUGUST, 1963)

6720-63-R: Warehousemen and Miscellaneous Drivers Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Dominion Citrus Company Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, those above the rank of foreman, office and sales staff and students employed during the school vacation period." (27 employees in the unit).

6735-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Purity Ice & Cold Storage Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, those above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week" (18 employees in the unit).

6737-63-R: United Brotherhood of Carpenters and Joiners of America Local 2466 (Applicant) v. Carl J. Lehman & Sons Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Renfrew, with the exception of the Township of McNab, save and except non-working foreman." (5 employees in the unit).

6747-63-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Freebro Leaseholds Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent working at or out of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

6754-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Sam Cosentino Construction Limited (Respondent).

Unit: "all employees of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman.: (2 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

6444-63-R: United Steelworkers of America (Applicant) v. J. Harris & Sons Limited (Respondent).

Unit: "all employees of the respondent at its steel yard at London, save and except foremen, persons above the rank of foreman, office staff and persons covered by the Board's certificate dated June 5th, 1963 certifying the applicant as bargaining agent for certain employees of the respondent at London." (4 employees in the unit).

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| Number of names on revised eligibility list | | 4 |
| Number of ballots cast | | 4 |
| Number of ballots marked in favour of applicant | 4 | |
| Number of ballots marked in favour of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141 | 0 | |

6452-63-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Federal-Mogul-Bower (Canada) Limited, Mechanical Rubber Division (Respondent).

Unit: "all employees of the respondent at Mitchell, save and except foremen, foreladies, persons above the ranks of foreman and forelady, office and sales staff and students employed during the school vacation period." (106 employees in the unit).

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| Number of names on revised eligibility list | | 101 |
| Number of ballots cast | | 98 |
| Number of ballots spoiled | 1 | |
| Number of ballots marked in favour of applicant | 55 | |
| Number of ballots marked in favour of intervener | 42 | |

Certified Subsequent to Post-Hearing Vote

4491-62-R: International Union of Mine, Mill and Smelter Workers (Canada) (Applicant) v. Cobalt Refinery Limited (Respondent) v. United Steelworkers of America (Intervener). (INTERVENER DISMISSED)

Unit: "all employees of the respondent at its Refinery in Coleman Township, save and except foremen and shift bosses, persons above the rank of foreman and shift boss, laboratory chemists, laboratory technicians and assistants, office staff and students employed during the school vacation period." (30 employees in the unit).

Number of names on revised
eligibility list
Number of ballots cast 29
Number of ballots segregated
(not counted) 3
Number of ballots marked in
favour of applicant 15
Number of ballots marked in
favour of intervener 11

6279-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Canada Bread Company Limited (Respondent) v. District 50, United Mine Workers of America (Intervener) v. General Workers' Local 800, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - A.F.L. - C.I.O. - C.L.C. (Intervener).

Unit: "all driver salesmen in the employ of the respondent at its Windsor depot, save and except supervisors and persons above the rank of supervisor." (16 employees in the unit).

(AGREEMENT OF THE PARTIES)

Number of names on revised
eligibility list 14
Number of ballots cast 15
Number of ballots cast in
favour of applicant 14
Number of ballots marked in
favour of intervener, General
Workers' Local 800, International
Union of United Brewery, Flour,
Cereal, Soft Drink and Distillery
Workers of America A.F.L. - C.I.O.
- C.L.C. 1

Certification Dismissed

6415-63-R: International Union of Operating Engineers (Applicant) v. Atlas Steels Company, Limited (Scrap metal division) (Respondent) v. Canadian Steelworker's Union, Atlas Division (Intervener).

The Board endorsed the Record as follows:

"The applicant has applied to be certified as bargaining agent for all hoisting engineers and oilers operating locomotive cranes and crawler cranes in the scrapmetal division of the respondent at Welland.

The hoisting engineers in the employ of the respondent are currently represented by the intervener and are part of an overall industrial unit represented by the intervener.

The applicant argued that the hoisting engineers employed by the respondent are entitled to be represented by the applicant craft union because of the recognized craft status of the hoisting engineers. The applicant called as a witness one of the hoisting engineers in the proposed bargaining unit who testified that he was dissatisfied with the representation given to the hoisting engineers by the intervener as bargaining agent. His main source of complaint appears to be that he was dissatisfied with the results of an arbitration concerning the classification of hoisting engineers under the collective agreement.

The Board notes the agreement of the parties that the evidence heard by the Board in the Atlas Steels Company Limited Case, Board file #6391-63-R, is to be applied to this case.

Having regard to all the evidence adduced, the representations of the parties, the findings of the Board in the Atlas Steels Company Limited Case, Board file #6391-63-R, and for the reasons given by the Board in that case, the Board is of opinion that it should exercise its discretion and refuse to apply section 6(2) of The Labour Relations Act in favour of the applicant.

The Board therefore finds that the bargaining unit proposed by the applicant is inappropriate for collective bargaining in the circumstances of this case.

The application is therefore dismissed."

5491-63-R: International Hod Carriers', Building & Common Labourers' Union of America (Applicant) v. Able Construction Company Limited (Townships of North & South Elmsley, Montague, Walford)(Respondent).

The Board endorsed the Record as follows:

"The applicant has filed a duly completed Form 60, Declaration Concerning Membership Documents, Construction Industry. The respondent has filed a reply indicating that there are no employees in the bargaining unit proposed by the applicant.

The Board further finds that there were no employees of the respondent on the date of the making of the application in any bargaining unit which the Board might deem to be appropriate."

6547-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Yolles Furniture Company Limited (Respondent). (33 employees)

The Board endorsed the Record as follows:

"Although the applicant has requested leave of the Board to withdraw its application herein, the Board following its usual practice in such cases, dismissed the application."

6621-63-R: International Molders and Allied Workers Union AFL. CIO. CLC. (Applicant) v. Hamilton Gear and Machine Company Division of Hamstell Corporation Limited (Respondent). (43 employees).

The Board endorsed the Record as follows:

"The applicant having failed to file a declaration concerning membership documents (Form 9) in accordance with the Board's Rules of Procedure this application is therefore dismissed."

6710-63-R: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Applicant) v. Colquhouns Scottish Fur House Ltd. (Respondent). (7 employees).

The Board endorsed the Record as follows:

"The applicant having requested leave to withdraw its application the Board following its usual practice dismisses the application."

6738-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. John Cutler Construction Co. (Respondent). (2 employees).

The Board endorsed the Record as follows:

"The applicant failed to comply with section 50, subsection 1 of the Board's Rules of Procedure with respect to the filing of evidence of membership. In accordance with its usual practice, the application is therefore dismissed."

Applications for Certification Dismissed Subsequent to
Pre-Hearing Vote

6467-63-R: Local Union 304, International Union of United
Brewery, Flour, Cereal, Soft Drink and Distillery Workers of
America, AFL-CIO-CLC (Applicant) v. Sudbury Brewing and Malting
Company Limited (Respondent) v. The Sudbury and District General
Workers' Union Local 902 of the International Union of Mine,
Mill and Smelter Workers (Intervener).

Voting constituency: "all employees of the respondent at Sudbury,
save and except foremen, persons above the rank of foreman, office
staff and sales staff." (7 employees in the constituency).

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| Number of names on revised eligibility list | | 7 |
| Number of ballots cast | 7 | |
| Number of ballots marked in favour of applicant | 3 | |
| Number of ballots marked in favour of intervener | 4 | |

6486-63-R: Canadian Union of Operating Engineers (on behalf of
its local 101) (Applicant) v. Peel Memorial Hospital (Respondent)
v. International Union of Operating Engineers Local 796
(Intervener).

Voting constituency: "all stationary engineers and persons
primarily engaged as their helpers employed by the respondent
in the boiler room of its hospital at Brampton."
(8 employees in the constituency).

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| Number of names on revised eligibility list | | 8 |
| Number of ballots cast | 8 | |
| Number of ballots marked in favour of applicant | 3 | |
| Number of ballots marked in favour of intervener | 5 | |

Applications for Certification Dismissed Subsequent to
Post-Hearing Vote

5490-62-R: United Rubber, Cork, Linoleum and Plastic Workers
of America, AFL-CIO-CLC (Applicant) v. Gates Rubber of Canada
Limited (Respondent).

Unit: "all employees of the respondent at Brantford, save
and except foremen, persons above the rank of foreman, chief
engineer, students employed during the school vacation period
and office and sales staff." (95 employees in the unit).

On March 18, 1963, the Board, in directing that a representation vote be taken in this case, endorsed the Record in part as follows:

"There has been filed in this matter, documents signed by some employees of the respondent in opposition to the application of the applicant and a witness who gave evidence in support of the origination of the documents stated that the documents were typed by one of the employees of the respondent who signed in opposition to the application and that that employee prepared the documents at his request. The second witness testified that the wording on the documents was composed by the first witness and that the documents were typed by another employee at the request of the first witness.

In view of all the evidence, we are satisfied that the origination and circulation of the documents submitted to the Board as indicative of opposition of some of the employees of the respondent to the application of the applicant sufficiently weakens the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote in this case."

Board Member E. Boyer dissented and said:

"I dissent. In view of the fact that the employee who typed the petition was not called to testify, I am not satisfied with the origination of the petition. I would not require the confirmatory evidence of a representation vote in this matter and would have certified the applicant."

On April 8, 1963, in denying a request of the applicant that the Board reconsider its decision of March 18, the Board endorsed the Record as follows:

"The applicant has requested the Board to review its decision dated March 18th, 1963 in this matter and to find that the document submitted to the Board as indicative of opposition to the application of the applicant does not weaken the evidence of membership submitted by the applicant so as to make it necessary for the Board to seek the confirmatory evidence of a representation vote in this case.

The applicant takes the position that there was no evidence before the Board within the personal knowledge and observation of the witness as to the circumstances concerning the origination of the statement of desire.

The evidence before the Board concerning the origination of the petition filed in this matter is as follows:

The witness Steer stated that on his instructions, D. Varey prepared the document on which the signatures were obtained and that Varey signed the document and his signature was identified on the petition by an "X". Steer further testified that after D. Varey typed the petition he delivered the petition to Fletcher at Fletcher's home and that Steer got the document from Fletcher. This statement was corroborated by Fletcher when Fletcher testified that D. Varey had prepared the petition and that Steer had composed the wording on the petition for D. Varey.

On the basis of this evidence, the Board found that there was sufficient evidence as to the circumstances concerning the origination of the material filed.

Since the applicant did not allege that there was new evidence now available that was not available to it at the hearing, we do not consider it advisable to reconsider our decision dated March 18th, 1963 in this matter."

Board Member E. Boyer said:

"Without detracting from my dissent to the majority decision dated March 18th, 1963, I agree with the majority that in view of the fact that there is no new evidence which was not available to the applicant at the hearing in this matter, it is not advisable to reconsider the Board's decision dated March 18th, 1963."

On June 18, 1963, the Board dismissed the application on the ground that a majority of the ballots cast by all those eligible to vote were not marked in favour of the applicant. In arriving at this decision, the Board held that three segregated ballots cast by persons classified as Lab. Assistant-Utility would not affect the result even if they were all cast in favour of the applicant. However, it was brought to the Board's attention that this decision was based on an error "in its arithmetical calculations" and, on June 25, the Board revoked its decision of June 18 dismissing the

the application and directed that the segregated ballots cast by the three persons classified as Lab. Assistant-Utility be counted. Following the counting of these ballots, the applicant requested that a new representation vote be taken. On August 3, 1963, the Board denied this request and dismissed the application and in the course of its decision said in part:

"The applicant has requested that the Board direct a new representation vote on the grounds that the Board, by causing the three segregated ballots to be counted, has destroyed the secrecy of the vote with respect to the three persons who cast the three segregated ballots.

At the time the vote was taken there were 94 employees on the voters list and of the 94 ballots that were cast, 47 were marked in favour of the applicant, 44 were marked against the applicant and 3 ballots were segregated pending a ruling by the Board as to the eligibility for inclusion in the bargaining unit of the three persons who cast the segregated ballots. The Board subsequently found that the three persons who cast the segregated ballots were included in the bargaining unit and directed that their ballots be counted. The three segregated ballots were all marked against the applicant so that a total of 47 ballots were marked against the applicant.

Having regard to all the representations of the parties, the Board is satisfied that at the time it exercised its discretion and directed that the three segregated ballots be counted, it had no reason to assume that the manner in which the three persons had voted would be disclosed. On the contrary, the mathematical chance that the secrecy of the vote would be maintained far outweighed the possibility that the secrecy of the vote would be destroyed with respect to the three persons who cast the segregated ballots. In any representation vote there is always a mathematical possibility that the secrecy of the vote will be destroyed by all ballots being marked in the same manner, either for or against an applicant.

In any event, the manner in which the ballots were marked and the result of the vote has not been interfered with by the inadvertent disclosure which subsequently came about by the accident of all the three persons voting in the same manner.

The Board therefore finds that the purpose of the representation vote has been served in this case by reflecting the true wishes of the employees at the time the ballots were cast.

On the taking of the representation vote directed by the Board not more than fifty per cent of the ballots of all those eligible to vote were cast in favour of the applicant.

The application is therefore dismissed."

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| Number of names on revised eligibility list | | 94 |
| Number of ballots cast | 94 | |
| Number of ballots segregated (not counted) | 3 | |
| Number of ballots marked in favour of applicant | 47 | |
| Number of ballots marked as opposed to applicant | 44 | |

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST 1963

6374-63-R: Laundry, Dry Cleaning and Dye House Workers International Union, Local 351 (Applicant) v. Sanitary Laundry Co. (Toronto) (Respondent) (41 employees).

6604-63-R: International Hod Carriers, Building and Common Labourers' Union of North America, Local 597 (Applicant) v. M. Sule Construction Limited (in and out of Peterborough, the Counties of Victoria, Peterborough and the east portion of Northumberland County) (Respondent). (28 employees).

6605-63-R: International Hod Carriers Building and Common Labourers Union of America, Local 597 (Applicant) v. Lightfoot Construction Limited (in and out of Peterborough, the Counties of Victoria, Peterborough and the east portion of Northumberland County) (Respondent). (8 employees).

6627-63-R: International Union of Operating Engineers, Local 793, (Applicant) v. Carrington Construction Company Limited (Respondent) (8 employees).

6670-63-R: Wean McKay Shop Committee (Applicant) v. Wean McKay of Canada Limited (Galt) (Respondent). (65 employees).

6748-63-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Ault Kinney Reality Limited (Respondent). (2 employees).

11,933-56: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Butler - Ash Limited (Respondent). (7 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING AUGUST 1963

5110-62-R: The Oliver Lumber Company of Toronto Limited (Applicant) v. International Woodworkers of America (Respondent).

5154-63-R: Ross E. Fox on his own behalf and on behalf of the employees of Oliver Lumber Company Limited (Applicant) v. International Woodworkers of America (Respondent) v. The Oliver Lumber Company of Toronto Limited (Intervener).

(THE ABOVE MATTERS ARE CONSOLIDATED).

(Re; The Oliver Lumber Company of Toronto Limited)
10 employees were involved in the above matters.

(SEE INDEXED ENDORSEMENT PAGE 280)

6337-63-R: Clifford Judd (Applicant) v. United Steelworkers of America (Respondent) (DISMISSED)

6338-63-R: Doug McLachlan (Applicant) v. United Steelworkers of America (Respondent) (DISMISSED)

6339-63-R: Victor Godin (Applicant) v. United Steelworkers of America (Respondent) (DISMISSED)

6340-63-R: G. Varnai (Applicant) v. United Steelworkers of America (Respondent) (DISMISSED)

6341-63-R: Martin Reemeyer (Applicant) v. United Steelworkers of America (Respondent) (DISMISSED)

(Re: Dayton Steel Foundry of Canada Limited,
Orillia, Ontario).

(52 EMPLOYEES WERE INVOLVED IN THE ABOVE APPLICATIONS)

| | |
|---|----|
| Number of names on revised eligibility list | 41 |
| Number of ballots cast | 41 |
| Number of ballots marked in favour of respondent | 23 |
| Number of ballots marked as opposed to respondent | 18 |

6425-63-R: Frank Weeks (Applicant) v. Retail, Wholesale & Department Store Union Local 414 of the Retail, Wholesale & Department Store Union AFL:CIO:CLC (Respondent) v. Dominion Citrus Company Limited (Intervener). (GRANTED) (30 employees)

(Re: Dominion Citrus Company Limited,
Metropolitan Toronto)

| | | |
|---|----|----|
| Number of names on eligibility list | | 30 |
| Number of ballots cast | 29 | |
| Number of ballots marked in favour of respondent | 3 | |
| Number of ballots marked as opposed to respondent | 26 | |

6683-63-R: Truck Drivers employed by Cooper & Beatty Ltd. (Applicant) v. International Brotherhood of Teamsters Local #219 (Respondent). (GRANTED). (5 employees)

(Re: Cooper & Beatty Ltd.,
Metropolitan Toronto, Ontario).

The Board endorsed the Record as follows:

"The applicants having made an application to terminate the bargaining rights of the respondent and the respondent having advised the Board in its reply that it "does not wish to intervene in the application and is agreeable that the application be granted without an election being held, as we wish to relinquish any claims to represent any of the employees in this situation," the Board finds that the respondent has abandoned its bargaining rights and no longer represents the employees of Cooper & Beatty Limited for whom it has heretofore been the bargaining agent."

APPLICATIONS FOR DECLARATION OF SUCCESSOR RIGHTS AUGUST 1981

6568-63-R: International Union United Automobile, Aerospace Agricultural Implement Workers of America (affiliated with the AFL-CIO-CLC) (Applicant) v. Westeel Products Limited and Columbia Metal Rolling Mills Limited (Respondent) v. Sheet Metal Workers' International Association, Local Union No. 233 of Metropolitan Toronto (Predecessor). (WITHDRAWN).

6598-63-R: The Bricklayers', Masons' and Plasterers' International Union of America, Local No. 12 Kitchener Ontario (Applicant) v. Twin City Tile Company Limited (Respondent) v. Local 421, United Rubber, Cork, Linoleum and Plastic Workers of America (Predecessor) (GRANTED).

The Board endorsed the Record as follows:

"The Board finds that the applicant is, by reason of transfer of jurisdiction, the successor to Local 421, United Rubber, Cork, Linoleum and Plastic Workers of America, which was the bargaining agent for a unit of employees of the respondent defined in a collective agreement between Alvin Tile Company Limited, Twin City Tile Company Limited and Bernardo-Hill Tile Company Limited, and Local 421, United Rubber, Cork, Linoleum and Plastic Workers of America, entered into the 15th day of May, 1961, and effective from the 15th day of May, 1961, to the 14th day of May, 1963, with year to year renewal subject to notice.

An affirmative declaration under Section 47(1) of The Labour Relations Act, to the effect that the applicant is the successor to Local 421, United Rubber, Cork, Linoleum and Plastic Workers of America, which was a party to the agreement referred to with the respondent, will issue."

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING
AUGUST 1963

6490-63-U: Dunker Construction Limited and Oliver's Excavating & Grading (Applicant) v. Ken McDougall (Respondent). (WITHDRAWN).

6493-63-U: Spalding and Son (C.M.H.C. housing project, Toronto) (Applicant) v. The Brotherhood of Painters, Decorators, and Paper Hangers of America, District Council 46 (Respondent). (WITHDRAWN).

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING AUGUST 1963

5205-63-U: Petrus Joseph Schoutsen (Complainant) v. The United Brotherhood of Carpenters and Joiners of America, Local 27, and Moffats Limited (Respondent).

The Board endorsed the Record as follows:

"On considering the statements made to the Field Officer, Mr. H.K. McKay, in the course of his inquiry into the complaint in this matter, we find that the evidence in this case does not disclose the ingredients of an offence in violation of any of the unfair practice provisions of The Labour Relations Act.

The complaint is therefore dismissed.

On a complaint under section 65 of the Act, we are called upon to deal only with questions that arise under the Act and we express no opinion as to whether a remedy is available to the complainant in another forum."

6144-63-U: Local Union 633 Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Complainant) v. Lapowich Meat Market (Respondent).

6378-63-U: Food Handlers' Local Union 175, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO (Complainant) v. Elder Packing Company Limited (Respondent).

6439-63-U: United Brotherhood of Carpenters and Joiners of America (Complainant) v. Continental Construction Co. (London) (Respondent).

6574-63-U: Retail Clerks International Association (Complainant) v. Pollocks Groceries Limited (Hamilton) (Respondent).

6639-63-U: International Hod Carriers Building and Common Labourers Union, Local #597 (Complainant) v. M. Sule Construction Limited (Respondent).

6674-63-U: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Complainant) v. Larouche Brothers Construction Limited (Respondent).

6719-63-U: Steve Vodi (Complainant) v. Dual-Pane Company Limited (Respondent).

6733-63-U: The Sudbury and District General Workers' Union Local 902 of the International Union of Mine, Mill and Smelter Workers (Complainant) v. Ernie's Signs Limited (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

6454-63-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 880 affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Pejay Packing Company Limited (Respondent).
(GRANTED AUGUST 1963)

The Board endorsed the Record in part as follows:

"The list of employees filed by the respondent in this matter included the names of thirty-four persons who were laid off prior to July 2nd, 1963, the date as of which the application was made, and who would not be recalled to work until September, 1963. The list also contained the names of four persons who, for various

reasons, were not at work on July 2nd, 1963 and for whom the dates of return to work were indefinite. The Board, in accordance with its usual practice, did not include these persons as employees in the bargaining unit at the time the application was made."

6548-63-R: Amalgamated Plant Guards, Local 1958, United Plant Guard Workers of America (Applicant) v. Walker Metal Products Limited (Respondent). (GRANTED AUGUST, 1963)

The Board endorsed the Record as follows:

"The respondent argues that the unit of employees applied for by the applicant is not appropriate for collective bargaining as the employees concerned are special constables and for the Board to certify such a unit would be contrary to section 26 of The Police Act R.S.O. 1960 c. 298 which reads:

A member of a police force shall not remain or become a member of any trade union or of any organization that is affiliated directly or indirectly with a trade union.

The Board finds that the employees of the respondent who were appointed as special constables are not members of a police force within the meaning of section 2(d) of The Labour Relations Act. (See Hamilton Society for the Prevention of Cruelty to Animals Case O.L.R.B. Monthly Report, November 1957, p. 16, and Chrysler Corporation of Canada Limited Case O.L.R.B. Monthly Report, April, 1959, p. 28)."

6600-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bellite Construction Limited (Respondent). (GRANTED AUGUST 1963)

The Board endorsed the Record in part as follows:

"The applicant has filed collective agreements covering the area it is seeking in this application and the jurisdiction of the local appears to cover the same area. However, for the reasons given in Unicrete Construction Limited, file #6052-63-R, May, 1963, the Board further finds that all carpenters and carpenter's apprentices of the respondent employed at or working out of the City of Ottawa, save and except non-working foremen and persons above the rank of non working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

The Board further endorsed the Record in part as follows:

"In its reply the respondent submitted that a representation vote should be held because the number of employees in the bargaining unit had increased since the date of the making of the application and, further, by reason of the fact that the signatures of some of the employees on the membership evidence submitted by the applicant may have been obtained improperly (emphasis added). The respondent did not request a hearing, but instead in paragraph 14(2) of the reply consented to the Board disposing of the matter without a hearing although making the representations as outlined above.

Following receipt of the reply the Registrar, on the direction of the Board, informed the respondent by letter dated July 26, 1963, that if it was its intention to pursue these matters, a hearing would have to be held. The respondent's attention was directed to section 47 of the Board's Rules of Procedure, to a recent decision of the Board dealing with procedure where a respondent makes allegations of impropriety and to section 92(2) of The Labour Relations Act.

In response thereto the respondent, through its solicitors, wrote the Board on July 31st. There is no indication in the letter that the respondent intends to pursue the allegations of impropriety made in the reply. The onus is on the respondent to establish such allegations. No particulars have been filed. There has been no compliance with section 75 of the Board's Rules of Procedure. There is therefore no reason to put the case on for hearing to deal with this issue. In so far as the issue relating to prematurity is concerned, the respondent did not in its reply ask for a hearing on that ground. It made its representations in the reply and has repeated these representations to some extent in its letter of July 31st. It does not in fact ask for a hearing in its letter of July 31st but simply refers to "the proposed hearing". By reason of section 75(9a) of The Labour Relations Act, the Board is not obliged to hold a hearing in construction industry certification cases. If we assume all the statements of the respondent with respect to the increase in the bargaining unit are true, we would then be in a position to deal with the issues without a hearing.

In all the circumstances therefore the Board does not deem it necessary to hold a hearing in this matter.

The allegation of misrepresentation in the application contained in the letter of July 31st, is without foundation in our opinion. Under subsection 1 of section 7 of the Act, the Board is required to ascertain the number of employees in the bargaining unit at the time the application was made. The application must be deemed to speak as at the time it is made. On that date, the applicant says (in paragraph 7 of the Application), there were approximately 6 employees in the bargaining unit. On that day there were, according to the list of employees filed by the respondent, 8 employees in the unit. This is a fact which is peculiarly in the knowledge of the respondent. A union can never be certain of the exact number of employees in a bargaining unit on any particular day. That is the reason why the application form in paragraph 7 refers to 'the approximate number'. We must therefore reject the submission of the respondent on this point.

Assuming the facts with respect to the increase of employees in the bargaining unit are true, these facts do not, in our opinion, warrant a departure from our regular policy (derived from section 7(1) of the Act) of looking to the date of the making of the application for the purpose of establishing the number of employees in the bargaining unit for the purposes of section 7. The present case is one which falls within the construction industry and it is clear that under section 92(2), the Board need not have regard to any increase in the bargaining unit after the date the application was made. Furthermore, in this case, Form 57 (Notice to Employees) was posted after the increase in the unit took place and all the employees there at that time had an opportunity to file a statement of objections. None has been received. Again, the union in this case has filed evidence of membership for 9 persons and this would warrant outright certification for a unit of up to 16 persons.

In all these circumstances, therefore, the Board does not deem it advisable to order a representation vote in this case."

6717-63-R: The Bricklayers, Masons and Plasterers International Union of America, Local No. 3, Guelph, Ontario (Applicant) v. Ball Brothers Limited (Respondent). (GRANTED AUGUST 1963)

The Board endorsed the Record in part as follows:

"In this application the applicant seeks an area consisting of the Counties of Wellington and Dufferin excepting therefrom the Township of Mulmur in Dufferin. In support of its claim the applicant has filed a collective agreement signed by a number of resident contractors and one non-resident contractor which agreement covers the area sought. This area corresponds (with the possible exception of a portion of the Township of Puslinch in Wellington County) to the established geographical jurisdiction of the applicant local. An agreement on file with the Board indicates that the applicant had an agreement with the Guelph Builders Exchange for a substantially similar area. This agreement ran for one year, commencing May 1st, 1960. Prima facie, therefore, the applicant would appear to be entitled to the area it seeks in the present application.

However, as was pointed out in Abel Construction Co. Ltd., General Contractors Case, File No. 6051-63-R, May, 1963, the fact that a particular union has established a pattern of collective bargaining for a given area is not the sole factor with which the Board is concerned. In that case it was pointed out that the area sought by the Union (and backed up by collective agreements) differed widely from the jurisdictions of other locals of different unions in the area and from the pattern of collective bargaining of these unions in the area.

In the present case the job affected is a new building at the Ontario Veterinary College in Guelph. On August 14, 1963, the Hod Carriers were certified for all construction labourers of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa all in the County of Wellington. In that particular case the Hod Carriers sought the County of Wellington and in support of its application the applicant filed agreements for a number of contractors covering the Counties of Wellington, Perth and Waterloo. The job site affected was also the Veterinary College in Guelph. The area granted by the Board was the same as that granted in Starnino Cesaroni Limited, File No. 5167-62-R, January, 1963, and Wolfond Construction Limited, File No. 6657-63-R, August, 1963. In both these instances, the application affected carpenters.

In these circumstances and bearing in mind the fact that the areas granted by the Board in its recent decisions in construction industry cases do not not represent the final

thinking of the Board must be regarded as of an interim nature only (see Abel Construction Co. Ltd., General Contractors supra) the Board further finds that all bricklayers, bricklayer apprentices, stone masons and stone mason apprentices in the employ of the respondent in the Townships of Puslinch, Nichol, Pilkington, Guelph and Eramosa in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman constitute a unit of employees of the respondent appropriate for collective bargaining."

TERMINATION INDEXED ENDORSEMENT

5110-62-R: The Oliver Lumber Company of Toronto Limited (Applicant) v. International Woodworkers of America (Respondent).

5154-62-R: Ross E. Fox on his own behalf and on behalf of the employees of Oliver Lumber Company Limited (Applicant) v. International Woodworkers of America (Respondent) v. The Oliver Lumber Company of Toronto Limited (Intervener).

(THE ABOVE MATTERS ARE CONSOLIDATED).

(Re: The Oliver Lumber Company of Toronto Limited)

The Board endorsed the Record as follows:

"The respondent, International Woodworkers of America, (hereinafter referred to as 'the union') was certified on June 11th, 1962, as the bargaining agent of the employees of The Oliver Lumber Company of Toronto Limited (hereinafter referred to as 'the company'), in the bargaining unit affected by this application and, on June 18th, 1962, gave written notice to the company of its desire to bargain with a view to making a collective agreement. Mr. Smart, for the company, replied to this notice on June 25th and informed the union in part as follows:

I have two trips to make in July that will keep me away most of that month, and one or two shorter trips to make in August.

By letter dated July 23rd, 1963, Mr. Pointon, for the union, forwarded three copies of 'the Proposed Collective Agreement' to the company and his accompanying letter read in part:

When you have had the opportunity of reviewing the contents, I would appreciate it if you would advise our office of suitable arrangements to commence negotiations.

Mr. Smart, by letter dated July 25th, 1962, acknowledged receipt of the proposed collective agreement and stated that he would review it as soon as possible. In his letter Mr. Smart also stated:-

Tomorrow being Thursday, there isn't too much time left this week and I have one more trip to make which will keep me away for the first and second week of August, - - - after which I shall give you a call, and we can arrange to go over the Proposal together.

Mr. Smart then telephoned Mr. Pointon's office on August 9th and was informed that Mr. Pointon would be absent until August 14th. Mr. Smart did not hear from Mr. Pointon and telephoned him again on August 22nd. Pursuant to an invitation by Mr. Smart, Mr. Pointon visited the company's yard on August 28th so Mr. Smart could meet him, show him around the premises and familiarize him with the kind of jobs that the company carried on. During this visit they set up a meeting for September 13th but Mr. Smart immediately notified Mr. Pointon that one of the company's representatives would be absent on that date and the meeting was re-scheduled for September 26th.

During the latter part of July two employees of the company, Ross E. Fox and Victor Brown, had been elected to the union's bargaining committee and a third employee, Beech, was elected as an alternate. By letter dated September 4, 1962, Mr. Pointon advised Brown and Fox that the meeting for September 13th had been changed to September 26th at 10:30 a.m. and to 'make the necessary arrangements with the Company to be available at the above suggested time and place'. Brown was discharged by the company on September 21st and Fox entered hospital at some time prior to September 26th. Mr. Pointon, who went alone to the meeting with Mr. Smart on September 26th, was aware of Brown's discharge prior to the meeting but stated that he was not aware of Fox's illness until Mr. Smart told him about it at their meeting. Mr. Pointon admitted, however, that he made no effort to have Beech, the alternate member of his bargaining committee, present at this meeting. While there is some evidence of a discussion regarding a bargaining committee for this meeting, Mr. Smart and Mr. Pointon ultimately agreed to postpone negotiations until Fox was available.

On October 19th Mr. Pointon telephoned Mr. Smart and they arranged to meet on October 25th. On the morning of October 25th, Mr. Smart was informed by telephone that Mr. Pointon could not attend because of urgent business elsewhere that had come up. Subsequently, Mr. Horan, for the union, spoke by telephone to Mr. Smart on November 22nd and suggested November 26th for a meeting. Mr. Smart, on the same day, talked to Mr. Pointon by telephone and they arranged a meeting for November 26th. Immediately after he made this arrangement with Mr. Pointon, Mr. Smart telephoned Mr. Horan and told him that he could not meet on November 26th because one of the company's representatives could not be present on that day. Mr. Horan mentioned the first week in December and, that week being clear for Mr. Smart, the matter was left there.

In the meantime, on November 24th, an application for a declaration terminating the bargaining rights of the union was made to the Board by Ross E. Fox (File No. 4980-62-R). After a hearing on December 11th, the Board dismissed Fox's application on December 13th and the record in that matter was endorsed as follows:

Application under section 45 of The Labour Relations Act for a declaration terminating bargaining rights. At the hearing the applicant informed the Board that he was unable to testify, and was not producing any witness to testify, in respect of the matters which must be established in order to entitle an applicant to relief under section 45. The solicitor for the employer requested leave of the Board to adduce evidence in respect of such matters and, the Board having reserved its decision on his request, he then withdrew it. Since the applicant has adduced no evidence in respect of his application, the application is dismissed.

By a letter to Mr. Smart, dated December 11th, Mr. Pointon suggested Tuesday, December 18th, for negotiations. Mr. Smart, on December 14th, informed Mr. Pointon that the company did not feel it would be proper to arrange a meeting as 'the question as to the Union's right to continue to represent the employees is presently being considered by the Labour Relations Board'. The instant application by the company for a declaration terminating the bargaining rights of the

union was made on December 12th, 1962, while a new application by Ross E. Fox, on his own behalf and on behalf of the employees of the company, was made on December 21st. The hearing in each of these matters was scheduled for January 9th, 1963, and, at the hearing, the Board directed that the two proceedings be consolidated.

Counsel for the company and counsel for the employees submit that the company and the union have not commenced to bargain. Counsel for the union submits that bargaining between the parties commenced on July 23rd, 1963, and that the union has repeatedly sought to bargain since that time.

Both applications herein are made under section 45 of The Labour Relations Act and both are governed by the provisions of subsection 2 of that section. Section 45 (2) provides for two situations in which an employer or any of the employees in a bargaining unit may make an application to the Board for a declaration terminating bargaining rights, namely,

- (1) where a trade union has given notice under section 11 or section 40 or has received notice under section 40 and has failed to commence to bargain within sixty days from the giving of notice, and
- (2) where the trade union and the employer have commenced to bargain (but before the Board has granted a request for conciliation services) and the trade union has allowed a period of sixty days to elapse during which it has not sought to bargain.

In either situation the Board may declare that the trade union no longer represents the employees in the bargaining unit. The making of a declaration under section 45 (2), and, for that matter, under section 45 (1), is, therefore, a matter of discretion for the Board. Accordingly, in our view, a finding that the union and the company in this case had failed to commence to bargain between June 18th and December 12th or December 21st would not, per se, entitle the company or the employees to the declaration they are seeking. In the exercise of its discretion, the concern of the Board is to ascertain whether a trade union which has acquired bargaining rights on behalf of employees has actively pursued and forwarded their interest in bargaining with their employer. An opportunity is afforded

to an interested party to bring to the attention of the Board an allegation that the trade union is not carrying out its function in a proper manner and, on such application, the union may then explain its delay in commencing or continuing negotiations as the case may be. Where the union provides a satisfactory explanation of the delay which has taken place, the Board has taken the position that the bargaining rights of the respondent union should not be terminated. Moreover, in exercising its discretion, the Board has not confined itself to a consideration of events that occurred 'within sixty days from the giving of the notice' but has had regard for events covering the whole period between the date of giving of notice and the date on which an application was made where this period was in excess of the 'sixty day' period. See the decisions of the Board in The Dominion Stores Limited Case, (1956) C.C.H. Canadian Labour Law Reporter 1955-59 Transfer Binder, ¶16,047; D.L.S. 76-529; The Walmer Transport Company Limited Case, (1953) C.C.H. Canadian Labour Law Reporter, 1949-54 Transfer Binder, ¶17,062; D.L.S. 76-404; and The Birchland Veneer Limited Case, (1960) C.L.S. 76-709.

However, before the Board is called upon to exercise its discretion, the applicants must show a failure to commence to bargain and the representations of counsel for the parties in this case were primarily directed to that issue. Counsel for the company submits that bargaining did not commence because there has been no meeting between the company and the union for the purpose of bargaining and because there has been no 'exchange of views' between them. In support of his submissions, counsel for the company relies on section 12 of The Labour Relations Act which reads as follows:-

The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

Counsel for the employees submits that no bargaining has taken place because a party 'cannot bargain unilaterally' and because bargaining 'must be in the presence of both parties'. Counsel for the union submits that, while bargaining normally proceeds by way of offer and counter-offer, the process of bargaining commences 'as soon as one makes an offer to the other.' Thus the union argues that bargaining was commenced in this case by the union's letter of July 23rd, 1962, to the company,

because in it the union forwarded copies of 'the proposed Collective Agreement' with a request that the company review the contents of the union's proposals and advise the union regarding arrangements to commence negotiations.

It appears to us that section 12 was not intended to specify an exact procedure which must be followed by parties during the course of bargaining, but rather to ensure that a party, having given or received notice, will not neglect or refuse to meet with and enter into negotiations with the other party. In this respect it must be noted that, in practice, a party frequently initiates the bargaining process by tendering proposals or a draft agreement to the other party prior to any meeting between them. A distinction must be drawn, however, between bargaining for the purpose of satisfying the obligation to bargain imposed by section 12 of the Act, on the one hand, and the commencement of bargaining for the purpose of section 45, on the other hand, since section 45 does not impose an obligation to bargain but provides a remedy in the case where a trade union has acquired bargaining rights on behalf of employees but takes no steps within a reasonable time to bargain with their employer on their behalf. In the circumstances comprehended by section 45, we are of opinion that a union that has taken bona fide steps to initiate negotiations with the employer must be said to have commenced to bargain within the meaning of the section.

We turn now to the question of whether or not the union, on the facts in this case, commenced to bargain prior to the making of the applications on December 12th and December 21st by the company and by the employees respectively. From the provisions of section 45(2), it is clear that the giving of notice by the union on June 18th, in itself, is not a commencement of bargaining and, of course, the union does not rely on this fact in support of its case. After giving notice, however, the union also forwarded to the company, on July 23rd, its proposals for a collective agreement together with a request that the company review them and then advise the union 'of suitable arrangements to commence negotiations'. We find that the union, by submitting its proposals to the company, took the necessary action to initiate bargaining between it and the company and commenced to bargain within the meaning of section 45 (2) of the Act.

In any event, while both the company and the union acted in good faith in their efforts to accommodate each other, it was primarily the fault of the company that no meeting for negotiations between them materialized until September 26th, more than three months after the giving of notice by the union. While it may be said that it was the fault of the union that no negotiations occurred on September 26th, the company agreed to postpone them and the union, on October 19th, made a further effort to commence them by arranging a meeting for October 25th. It was entirely the fault of the union that this meeting did not take place but, nevertheless, it made a further effort, on November 22nd, to commence the negotiations by arranging a meeting for November 26th. The company cancelled that meeting and, because of the application of November 24th, by Fox, has refused to bargain with the union since that date. In these circumstances it is arguable that the 60 days should not commence to run until on or about November 26th. Compare the Birchland Veneer Ltd. Case. supra. We find further that the union, having commenced to bargain on July 23rd, 1962, has not thereafter allowed a period of 60 days to elapse during which it has not sought to bargain with the company.

While, in view of our conclusion in this matter, it may be unnecessary for us to deal with the exercise of the Board's discretion under section 45 (2) of The Labour Relations Act, we should add that, if we had found that the union had failed to 'commence to bargain' within the meaning of the section, in the circumstances we have outlined we would not, in the exercise of our discretion, have terminated the bargaining rights of the union.

Both applications are therefore dismissed.

In view of our decision, it is unnecessary for the Board to deal with the request of counsel for the employees to adduce evidence in support of his submission that the Board should terminate the bargaining rights of the union without a representation vote."

Board Member, M.C. Hay dissented and Said:

"I dissent. The facts as outlined in the majority decision in this matter are not in dispute. We are in agreement that both the applicant and the respondent acted in good faith throughout. The area of difference between us is as to what constitutes a commencement of bargaining within the meaning of The Labour Relations Act.

The majority decision holds that the proposed collective agreement enclosed in the respondent's letter to the applicant of July 23rd, in itself constitutes the commencement of bargaining. In my view, such a unilateral act does not meet the statutory requirements in this regard.

Section 45(2) reads as follows:

'Where a trade union that has given notice under section 11 or section 40 or that has received notice under section 40 fails to commence to bargain within sixty days from the giving of the notice, or after having commenced to bargain but before the Board has granted a request for conciliation services, allows a period of sixty days to ~~the~~ elapse during which it has not sought to bargain, the Board may, upon the application of the employer or any of the employees in the bargaining unit and with or without a representation vote, declare that the trade union no longer represents the employees in the bargaining unit.'

The section thus clearly differentiates between commencing to bargain and seeking to bargain. The terms are not symonymous. An employer, or any of the employees in a bargaining unit are, by the section given a statutory right to apply for a declaration terminating the bargaining rights of a trade union in the following two distinctly different situations -

- (a) Where notice to bargain has been given under section 11 or section 40 and 60 days have elapsed following the giving of such notice during which time a trade union 'fails to commence to bargain' and
- (b) Where having commenced to bargain and prior to the Board granting a request for conciliation services the trade union 'allows 60 days to elapse during which it has not sought to bargain.'

The Act has given each of the parties certain statutory rights with respect to the subject of bargaining and in so doing has defined how one seeks to bargain and in what circumstances bargaining commences. With respect to the former, section 11 provides as follows:

'Following certification, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement.'

Thus the section makes it a condition precedent that the trade union give written notice of its desire to bargain before there is a statutory duty placed on the employer to commence to bargain. If the trade union fails to give such notice, there is no statutory onus on the employer to do anything. It is therefore clear that a notice of desire to bargain does not constitute the commencement of bargaining within the meaning of the statute.

How then does bargaining commence? Section 12 provides as follows:

'The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties may agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.'

The section makes it mandatory that, providing notice is given under section 11, 'the parties shall meet....and they shall bargain.' It would thus seem clear that it is a statutory requirement that the parties physically meet before bargaining can commence. Such a requirement is, I suggest, inherent in a definition of the term bargaining itself, for as the term suggests bargaining cannot take place in a vacuum, it is not a unilateral act. Rather it is an exchange of viewpoints in a 'give and take' situation during the course of which each party may be persuaded to modify his position in the interest of reaching an agreement.

The subject matter concerning which the parties shall meet and bargain is directed by section 12 to the making of a collective agreement. Section 1(1)(c) defines a collective agreement as being

'an agreement in writing.....containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employer's organization, the trade union or the employees'

Thus the arrangements for a meeting of the parties, while a necessary prerequisite to bargaining is not the commencement of bargaining. Bargaining commences with a meeting of the parties at which they discuss the subject matter of a proposed collective agreement as defined above.

It is clear that a party may stand on his statutory rights, or alternatively he may waive them either expressly or by implication by his course of conduct. Thus he may meet and bargain in circumstances where the trade union has not given a written notice. Additionally he may elect to bargain by an exchange of correspondence or by telephone. He may, in answer to certain written or verbal contractual demands of the union suggest modifications, make counter-proposals, or reject them entirely. However, in the absence of his doing any of these things, he can insist on his statutory rights and the mandatory provisions of the Act then apply.

Applying the above to the instant case, did the applicant either expressly or by his course of conduct waive his statutory rights? In my opinion he did not.

The respondents letter of July 23rd enclosing copies of a proposed collective agreement, if not acted upon by the applicant in circumstances which would amount to a waiver of his statutory rights, constitutes merely notice of the demands the union intends will form the subject of bargaining at a forthcoming meeting of the parties. Indeed, the letter in question clearly supports this view when it states 'when you have had an opportunity of reviewing the contents I would appreciate it if you would advise our office of suitable arrangements to commence negotiations' (emphasis added).

The applicant in his reply of July 25th did not accept, reject, or suggest modifications of the draft proposals. He merely acknowledged their receipt, undertook to review them, suggested certain dates when he would not be available to meet and concluded by saying 'I shall give you a call and we can arrange to go over the proposals together.' In other words, he did not waive his statutory right to a meeting with the respondent and a discussion of the proposals. In fact, he insisted on such a meeting and a discussion of them.

Having found on the evidence that the parties did not meet and commence to bargain within 60 days after the giving of notice of desire to bargain, and that the applicant did not waive his statutory rights during such period let us now consider if the applicant has waived his statutory right to a declaration by his

subsequent course of conduct. In other words, did the applicant meet and commence to bargain after the 60 day period in circumstances which could be taken to amount to a waiver of his right to a declaration under the first part of Section 45(2)? In my view he did not.

The evidence, as stated in the majority decision, is that the parties met on two occasions after the expiration of sixty days following the giving of notice of desire to bargain. The question that falls to be determined is then, did the parties at either of these meetings commence to bargain 'to make a collective agreement'.

In considering this matter, it should be remembered that on July 25th the trade union elected three employees as members of a bargaining committee, none of whom were present on the occasion of the meeting of the parties on either August 28th or September 26th.

With respect to the meeting of August 28th the evidence is that it was a 'get acquainted' meeting. No member of the bargaining committee was requested to be present because I suggest it was not intended that negotiations would take place at this time. As is stated in the majority decision 'Mr. Smart did not hear from Mr. Pointon and telephoned him again on August 22nd. Pursuant to an invitation by Mr. Smart, Mr. Pointon visited the company's yard on August 28th so Mr. Smart could meet him, show him around the premises and familiarize him with the kind of jobs that the respondent carried on. During this visit they set up a meeting for September 13th.' There is absolutely no evidence that there was any discussion at the meeting of August 28th which could be conceived as a commencement of bargaining. To the contrary, the evidence is that Mr. Smart offered to discuss the proposals enclosed in Mr. Pointon's letter of July 23rd and Mr. Pointon stated in his evidence that he had refused to do so without his bargaining committee being present.

With respect to the meeting of September 26th, the evidence is that Mr. Pointon attended alone at the company's office and, on learning that a member of his bargaining committee was hospitalized, the parties agreed to postpone the meeting until the employee returned to work. It is thus clear that no discussion took place relative to the subject matter of a collective agreement nor concerning the draft proposals earlier referred to.

Accordingly, on the basis of the evidence in this case, I find that the parties did not at any time commence to bargain within the meaning of The Labour Relations Act.

Such finding, however, does not, as is stated in the majority decision, per se entitle either the applicant employer or the applicant employees to the declaration they are seeking. The Board has a discretion to refuse to grant the declaration even though the applicant has made out its case. With respect, while I do not subscribe to the reasoning of the Board in the exercise of its discretion in these matters, even if one were to accept such reasoning, on the basis of the evidence in this case it is abundantly apparent that the trade union did not actively pursue and forward the interests of the employees for whom it had been accorded bargaining rights, nor did it provide a satisfactory answer for its failure to do so. There is no direct evidence, nor is there any allegation by the trade union, that the company's failure to meet and commence to bargain was in any manner an attempt on the part of the company to avoid collective bargaining. Indeed, had the trade union felt such to be the case it undoubtedly would have utilized the provisions of the Act to compel collective bargaining by way of an application for conciliation services or consent to prosecute for failure to bargain. This it did not do.

On the other hand, the company's inability to meet the trade union on several occasions on dates previously agreed upon by the parties, in my view, has been an important factor contributing to the delay and resultant failure of commencement of bargaining. Accordingly, in the circumstances of this case, I would exercise the Board's discretion against the applicant company and dismiss its application.

With respect to the application of the employees however, who through no apparent fault of their own have been penalized by the conduct of both their employer and their bargaining agent, I would, on this their second application for termination of bargaining rights, exercise the Board's discretion in their favour by directing that a representation vote be taken."

CONCILIATION INDEXED ENDORSEMENT

6586-63-C: International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers, Local 141, Warehousemen and Miscellaneous Drivers (Applicant) v. Flanagan Storage & Warehouse Limited (London) (Respondent). (WITHDRAWN, AUGUST, 1963)

"This is an application for conciliation services. The respondent company opposes the granting of conciliation services and says that, in view of the provisions of section 1 (1) (c) of The Labour Relations Act, the parties can not make a collective agreement while there is only one employee in the bargaining unit.

The Board dealt with this issue in the H. G. Francis & Sons Ltd. Case, (1960) C. C. H. Canadian Labour Law Reports, ¶ 16, 172; C.L.S. 76-689. In that case the Board noted that for certification purposes a bargaining unit must consist of more than one employee (in view of section 6 (1) of the Act) but refused to place that construction on section 1 (1) (c). While the Board limited its finding in the Francis Case to the situation where the union had bargaining rights by virtue of a collective agreement, we are of opinion that its conclusion applies equally to the present situation in which the union is negotiating a first agreement and there is only one person in the bargaining unit.

Accordingly the Board directs the parties to meet, bargain in good faith, make every reasonable effort to make a collective agreement and report their progress in this regard to the Board on or before August 21st, 1963."

On August 29, 1963 the Board further endorsed the Record as follows:

"Application withdrawn by leave of the Board."

PART 2

| | |
|---|-----|
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| 2. Hearings of the Ontario Labour Relations Board | S21 |
| 3. Applications and Complaints disposed of by the Ontario Labour Relations Board | S22 |
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| 6. Representation Votes in Termination Applications Disposed of by the Board | S25 |

TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

| | | Number of applications filed Aug 1st 5 months of fiscal year | | |
|-------|---|---|--------------|--------------|
| | | <u>1963</u> | <u>63-64</u> | <u>62-63</u> |
| I | Certification | 61 | 315 | 325 |
| II | Declaration Terminating Bargaining Rights | 3 | 33 | 32 |
| III | Declaration of Successor Status | - | 4 | 9 |
| IV | Conciliation Services | 59 | 541 | 607 |
| V | Declaration that Strike Unlawful | - | 22 | 25 |
| VI | Declaration that Lockout Unlawful | 1 | 1 | 5 |
| VII | Consent to Prosecute | 9 | 89 | 48 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 14 | 65 | 58 |
| IX | Miscellaneous | <u>-</u> | <u>4</u> | <u>12</u> |
| TOTAL | | <u>147</u> | <u>1074</u> | <u>1121</u> |

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

| | | Number Aug 1st 5 months of fiscal year | | |
|---|--|---|--------------|--------------|
| | | <u>1963</u> | <u>63-64</u> | <u>62-63</u> |
| Hearings & Continuation of Hearings by the Board | | 73 | 441 | 519 |

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

| | | Number of appl'ns disposed of Aug 1st 5 months of fiscal year | | |
|-------|---|--|--------------|--------------|
| | | <u>'63</u> | <u>63-64</u> | <u>62-63</u> |
| I | Certification | 52 | 337 | 352 |
| II | Declaration Terminating Bargaining Rights | 9 | 50 | 32 |
| III | Declaration of Successor Status | 2 | 5 | 1 |
| IV | Conciliation Services | 63 | 559 | 575 |
| V | Declaration that Strike Unlawful | - | 22 | 25 |
| VI | Declaration that Lockout Unlawful | - | - | 4 |
| VII | Consent to Prosecute | 2 | 71 | 38 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 9 | 61 | 62 |
| IX | Miscellaneous | <u>-</u> | <u>2</u> | <u>4</u> |
| TOTAL | | <u>137</u> | <u>1107</u> | <u>1093</u> |

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

| Disposition | Aug 1st 5 mos fiscal yr | | | *Employees | | |
|-------------------------------------|-------------------------|--------------|--------------|-------------|--------------|--------------|
| | <u>'63</u> | <u>63-64</u> | <u>62-63</u> | <u>'63</u> | <u>63-64</u> | <u>62-63</u> |
| I Certification | | | | | | |
| Granted | 37 | 240 | 236 | 693 | 7095 | 6426 |
| Dismissed | 8 | 59 | 77 | 309 | 1804 | 6176 |
| Withdrawn | <u>7</u> | <u>38</u> | <u>39</u> | <u>159</u> | <u>526</u> | <u>1300</u> |
| TOTAL | <u>52</u> | <u>337</u> | <u>352</u> | <u>1161</u> | <u>9425</u> | <u>13902</u> |
| II Termination of Bargaining Rights | | | | | | |
| Terminated | 2 | 32 | 21 | 35 | 791 | 475 |
| Dismissed | 7 | 17 | 6 | 62 | 466 | 147 |
| Withdrawn | <u>-</u> | <u>1</u> | <u>5</u> | <u>-</u> | <u>9</u> | <u>187</u> |
| TOTAL | <u>9</u> | <u>50</u> | <u>32</u> | <u>97</u> | <u>1266</u> | <u>809</u> |

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

S24 APPLICATIONS DISPOSED OF BY
BOARD (continued)

| | | Number of appl'ns disposed of Aug 1st 5 mos. fiscal year | | |
|-----|--|---|-------------------|-------------------|
| | | <u>'63</u> | <u>63-64</u> | <u>62-63</u> |
| III | <u>Conciliation Services*</u> | | | |
| | Referred | 51 | 524 | 516 |
| | Dismissed | 1 | 11 | 12 |
| | Withdrawn | <u>11</u> | <u>24</u> | <u>47</u> |
| | TOTAL | <u><u>63</u></u> | <u><u>559</u></u> | <u><u>575</u></u> |
| IV | <u>Declaration that Strike Unlawful</u> | | | |
| | Granted | - | 2 | 6 |
| | Dismissed | - | 3 | 7 |
| | Withdrawn | <u>-</u> | <u>17</u> | <u>12</u> |
| | TOTAL | <u><u>-</u></u> | <u><u>22</u></u> | <u><u>25</u></u> |
| V | <u>Declaration that Lockout Unlawful</u> | | | |
| | Granted | - | - | - |
| | Dismissed | - | - | 4 |
| | Withdrawn | <u>-</u> | <u>-</u> | <u>-</u> |
| | TOTAL | <u><u>-</u></u> | <u><u>-</u></u> | <u><u>4</u></u> |
| VI | <u>Consent to Prosecute</u> | | | |
| | Granted | - | 19 | 9 |
| | Dismissed | 2 | 5 | 6 |
| | Withdrawn | <u>-</u> | <u>47</u> | <u>22</u> |
| | TOTAL | <u><u>2</u></u> | <u><u>71</u></u> | <u><u>37</u></u> |

*Includes applications for conciliation services re unions claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number of Votes | | |
|----------------------------------|-----------------|----------------|---------------------|
| | Aug 1st '63 | 5 months 63-64 | of fiscal yr. 62-63 |
| <u>*Certification After Vote</u> | | | |
| pre-hearing vote | 2 | 10 | 17 |
| post-hearing vote | 2 | 27 | 9 |
| ballots not counted | - | - | 2 |
| <u>Dismissed After Vote</u> | | | |
| pre-hearing vote | 2 | 8 | 10 |
| post-hearing vote | 1 | 26 | 23 |
| ballots not counted | - | 1 | 1 |
| TOTAL | <u>7</u> | <u>72</u> | <u>62</u> |

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number | | |
|-------------------------------|-------------|----------------|---------------------|
| | Aug 1st '63 | 5 months 63-64 | of fiscal yr. 62-63 |
| *Respondent Union Successful | 1 | 6 | 5 |
| Respondent Union Unsuccessful | <u>1</u> | <u>17</u> | <u>5</u> |
| TOTAL | <u>2</u> | <u>23</u> | <u>10</u> |

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

MONTHLY REPORT



SEPTEMBER 1983

ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD DURING SEPTEMBER 1963

Bargaining Agents Certified During September
No Vote Conducted

6193-63-R: The Lumber and Sawmill Workers' Union, Local 2995 of The United Brotherhood of Carpenters and Joiners of America A.F.L.-C.I.O.-C.L.C. (Applicant) v. Spruce Falls Power & Paper Company Limited (Respondent).

Unit: "all employees of the respondent in its Forest Nursery in the Township of Fauquier, save and except foremen, persons above the rank of foreman and office staff." (37 employees in the unit).

(SEE INDEXED ENDORSEMENT PAGE 316)

6396-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Export Packers Company Limited (Respondent).

Unit: "all employees of the respondent employed at or working out of Metropolitan Toronto, save and except foremen, persons above the rank of foreman, sales and office staff, students employed for the school vacation period, persons regularly employed for not more than 24 hours per week, including Schoigim, maintenance employees, highway drivers and store employees." (82 employees in the unit).

(AGREEMENT OF THE PARTIES)

6569-63-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Kay's Industrial Catering Co. Limited (Respondent).

Unit: "all driver salesmen employed by the respondent at Toronto, save and except supervisors, persons above the rank of supervisor and office staff." (7 employees in the unit).

6614-63-R: Oshawa Typographical Union (I.T.U.) Local 969 (Applicant) v. Intercity Press Limited (Respondent).

Unit: "all employees of the respondent at Oshawa engaged in composing room work, save and except non-working foremen, persons above the rank of non-working foreman, office staff, and students employed during the school vacation period." (3 employees in the unit).

The Board endorsed the Record as follows:

"In support of its application for certification the applicant submitted as evidence of membership five working cards and five authorization cards with five accompanying receipts. The respondent filed specimen signatures for a list of eleven employees who it states were in the bargaining unit sought by the applicant on the date of the making of the application. A comparison of the union's evidence of membership with the respondent's list reveals that four of the working cards and four of the authorization cards are for persons in the bargaining unit on the date of the application. The four working cards are signed by an officer of the applicant union and indicate that monthly dues of one dollar have been paid for 1963 up to March, May or June. Three of the working cards are signed by the members and one bears no signature. The latter working card does not meet the Board's standard as set out in subsection 1 of section 50 of the Board's Rules of Procedure and accordingly we do not give any weight to the one unsigned working card. The four authorization cards bear original signatures of the employees. The receipts accompanying the authorization cards are signed by an officer of the union and are countersigned by the employee. The receipts indicate the payment of two dollar initiation fee and one dollar for local dues. In a previous certification application made by another local of the same union the Board accepted identical authorization cards as evidence of membership. In this circumstance we are of the opinion that the applicant has not forfeited its right to certification especially since, as was stated at the hearing before the Board, the applicant in submitting the authorization cards had relied on the fact of their previous acceptance by the Board. We, nevertheless, feel obliged to indicate that the Board may have to reconsider the acceptability of such authorization cards as evidence of membership on a future occasion."

6615-63-R: Oshawa Typographical Union (I.T.U.) Local 969 (Applicant) v. General Printers Limited (Respondent) v. Amalgamated Lithographers of America, Local 12 (Intervener).

Unit: "all employees of the respondent at Oshawa engaged in composing room work, save and except non-working foremen, persons above the rank of non-working foreman, office staff, students employed during the school vacation period."
(29 employees in the unit).

6650-63-R: Chatham General Workers Union - Local No. 330 of the Canadian Labour Congress (Applicant) v. Parkinson Cowan (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent at Chatham, save and except foremen, persons above the rank of foreman, office and sales staff." (34 employees in the unit).

6651-63-R: Barrie Typographical Union No. 873 (Applicant) v. Barrie Press Limited (Respondent).

Unit: "all employees of the respondent at Barrie performing composing room, pressroom and bindery work, save and except working foremen and persons above the rank of working foreman." (10 employees in the unit).

(AGREEMENT OF THE PARTIES)

6658-63-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Wonder Bakeries Limited (Respondent).

Unit: "all employees of the respondent at its Ottawa depot, save and except route supervisors, persons above the rank of route supervisor, office staff and students hired for the school vacation period." (9 employees in the unit).

6713-63-R: Lumber & Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters & Joiners of America (Applicant) v. Refinery Engineering Ltd. (Respondent) v. Int. Assoc. of Bridge Structural and Ornamental Iron Workers (Intervener) v. Plumbers and Pipefitters Union, Local 628 (Intervener) v. International Association of Bridge Structural and Ornamental Iron Workers, Local 759 (Intervener) v. International Brotherhood of Electrical Workers, Local 339 (Intervener) v. International Hod Carriers' Building and Common Labourers' Union of America Local 607 (Intervener).

Unit 1: "all employees of the respondent in the District of Kenora, save and except non-working foremen and persons above the rank of non-working foreman, carpenters and their apprentices millwrights, reinforcing rodmen and persons covered by a subsisting collective agreement." (18 employees in the unit). A certificate will issue to the applicant.

Unit 2: "all reinforcing rodmen employed by the respondent in the District of Kenora, save and except non-working foremen and persons above the rank of non-working foreman. (3 employees in the unit).

A certificate will issue to the intervener, International Association of Bridge, Structural and Ornamental Iron Workers, Local 759.

6732-63-R: Warehousemen and Miscellaneous Drivers, Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Dalton Cartage Co. Ltd. (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students hired for the school vacation period." (11 employees in the unit).

6758-63-R: Local #28, International Bro. of Bookbinders (Applicant) v. The Southam Printing Company Limited. (Respondent).

Unit: "all employees of the respondent at Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and persons covered by subsisting collective agreements." (10 employees in the unit).

6768-63-R: Canadian Transportation Workers' Union, No. 200, National Council of Canadian Labour (Applicant) v. Big Four Express Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, those above the rank of foreman and office staff." (5 employees in the unit).

6771-63-R: General Truck Drivers, Local 879 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Applicant) v. Wm. Eadie Limited (Respondent).

Unit: "all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman, office and sales staff." (16 employees in the unit).

6773-63-R: United Steelworkers of America (Applicant) v. Hodgson's Steel & Iron Works Ltd. (Respondent) v. International Union of Operating Engineers, Local 793 (Intervener).

Unit: "all employees of the respondent at Niagara Falls, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week, students hired for the school vacation period and persons covered by subsisting collective agreements between the respondent and International Union of Operating Engineers, Local 793, and the respondent and the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 736." (25 employees in the unit).

6787-63-R: International Hod Carriers', Building and Common Labourers' Union of America, Local 527, (A.F.L. - C.I.O.)(C.L.C.) (Applicant) v. Rideau Hill Realty Limited (Respondent).

Unit: "all construction labourers of the respondent employed at or working out of the City of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

The Board endorsed the Record in part as follows:

"The area sought by the applicant in this case corresponds to the area sought by another union in the Bellite Products Limited Case, file #6600-63-R, August, 1963. As in the Bellite Case, the applicant has filed a collective agreement signed by a number of contractors covering the area which it seeks in the present application. The area sought in the Bellite Products Limited Case was rejected by the Board. For the same reasons as given in the Bellite Case, but bearing in mind that the areas presently being granted do not represent the final thinking of the Board in these matters, the Board further finds that all construction labourers of the respondent employed at or working out of the City of Ottawa, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6788-63-R: Toronto Municipal Employees' Association, Local 79, National Union of Public Employees (Applicant) v. The Metropolitan Toronto Housing Company Limited (Respondent).

Unit: "all office employees of the respondent at Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor." (3 employees in the unit).

6789-63-R: Hotel & Restaurant Employees and Bartenders' International Union, Restaurant, Cafeteria and Tavern Employees Union, Local 254 (Applicant) v. Crawley & McCracken Company Limited (Respondent).

Unit: "all employees of the respondent at the Atomic Energy Plant at Deep River, save and except manager, assistant manager, coffee shop manager, commissary manager, matron, dietitian, chefs, head waitresses, management trainees, and office staff." (49 employees in the unit).

(AGREEMENT OF THE PARTIES)

6797-63-R: International Association of Machinists (Applicant)
v. H.A. Astlett & Co. (Canada) Ltd. (Respondent).

Unit: "all employees of the respondent at St. Thomas, save and except foremen, persons above the rank of foreman, office and sales staff." (8 employees in the unit).

6798-63-R: International Association of Machinists (Applicant)
v. St. Thomas Metallic Industries Limited (Respondent).

Unit: "all employees of the respondent at St. Thomas save and except foremen, persons above the rank of foreman, office and sales staff." (7 employees in the unit).

6806-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. John Cutler, carrying on business under the name and style of Cutler Construction Company (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

The Board endorsed the Record in part as follows:

"For the reasons given in Andeen Construction Limited, file no. 4924-62-R, November, 1962, the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6814-63-R: United Packinghouse, Food and Allied Workers AFL-CIO-CLC (Applicant) v. Knoll View Farms Ltd. (Respondent).

Unit: "all employees of the respondent at the Township of Scarborough, save and except foremen, persons above the rank of foreman, fieldmen, office and sales staff." (120 employees in the unit).

6816-63-R: United Brotherhood of Carpenters & Joiners of America, Local Union 2173 (Applicant) v. Dunker Construction Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Puslinch, Eramosa, Pilkington, Nichol and Guelph in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (13 employees in the unit).

The Board endorsed the Record as follows:

"The job site affected by the present application is in Guelph. In a number of recent cases where the jobs affected have been in or around Guelph, the Board has granted an area consisting of the Townships of Puslinch, Eramosa, Pilkington, Nichol and Guelph. The applicant has not filed any material supporting its claim for the County of Wellington. In these circumstances, the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Puslinch, Eramosa, Pilkington, Nichol and Guelph in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6821-63-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Domtar Packaging Limited (Respondent) v. Local 944, International Union of Operating Engineers (Intervener).

Unit: "all employees of the respondent at its Chatham plant, save and except foremen, persons above the rank of foreman, and office staff." (46 employees in the unit).

6823-63-R: The International Hod Carriers', Building and Common Labourers' Union of America, Local 493 (Applicant) v. L. R. Brown & Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the City of Sault Ste. Marie and in the Townships of Prince, Korah and Tarentorus and in the unorganized Townships of Parke and Awenge and in the Townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

6827-63-R: National Union of Public Service Employees (Applicant) v. Board of Public School Trustees Pickering Township School area No. 2 (Respondent).

Unit: "all employees of the respondent employed in its caretaking, maintenance and bus driving staffs, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (16 employees in the unit).

6828-63-R: Christian Labour Association of Canada (Applicant) v. Gerard Smeitink, carrying on business under the name of "Success" Janitor Service (Respondent).

Unit: "all employees of the respondent at Georgetown, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than 24 hours per week." (7 employees in the unit).

6830-63-R: Laundry, Dry Cleaning & Dye House Workers' International Union, Local 351 (Applicant) v. Royal Processing Company (Respondent).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman, office and sales staff." (34 employees in the unit).

6834-63-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Fraser-Brace Engineering Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

The Board endorsed the Record in part as follows:

"After considering the representations of the parties and in the circumstances of this case, we are unable to agree with the submission of the respondent that the Board should depart from the area which the Board has found to be appropriate in other cases. The Board, therefore, further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6835-63-R: International Woodworkers of America (Applicant) v. New Way Laminates Limited (Respondent).

Unit: "all employees of the respondent at Mimico, save and except foremen, persons above the rank of foreman, shipper, office and sales staff, students hired for the school vacation period and persons regularly employed for not more than 24 hours per week."
(41 employees in the unit).
(AGREEMENT OF THE PARTIES)

6841-63-R: Local #28, International Bro. of Bookbinders (Applicant) v. Cooper & Beatty, Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff and persons covered by subsisting collective agreements."
(7 employees in the unit).

6842-63-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. G. A. Huot Ltd. (Respondent).

Unit: "all employees of the respondent at Windsor, save and except foremen, persons above the rank of foreman and office staff."
(15 employees in the unit).

6855-63-R: United Packinghouse, Food & Allied Workers (Applicant) v. Maple Leaf Mills Limited (Respondent).

Unit: "all employees of the respondent in its quality control laboratory at its West Toronto Plant, save and except supervisors, persons above the rank of supervisor, students hired for the school vacation period and persons covered by a subsisting collective agreement."
(6 employees in the unit).

6865-63-R: National Union of Public Service Employees (Applicant) v. West Nipissing Home for the Aged (Respondent)

Unit: "all lay employees of the respondent at Sturgeon Falls, save and except professional medical staff, department heads, persons above the rank of department head, registered nurses, office staff and persons regularly employed for not more than 24 hours per week."
(21 employees in the unit).

6878-63-R: Port Arthur - Fort William General Workers' Union Local 1610, C.L.C. (Applicant) v. Twin City Gas Company Limited (Respondent).

Unit: "all employees of the respondent in its operations department in the cities of Port Arthur and Fort William and the Townships of Shuniah and Neebing, in the Thunder Bay District, save and except assistant supervisors, persons above the rank of assistant supervisor, inspectors, and confidential secretary to the divisional superintendent."
(29 employees in the unit).

6881-63-R: The United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "all millwrights and millwright apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

6887-63-R: Local Union 1678, International Brotherhood of Electrical Workers (Applicant) v. Public Utilities Commission of the City of Kingston (Respondent).

Unit: "all office employees of the respondent at Kingston, save and except transit system manager, sales manager, gas salesmen, billing supervisor, chief clerk, payroll and records clerks, chief draftsmen, stores superintendents and persons above the ranks of transit system manager, sales manager, gas salesman, billing supervisor, chief clerk, payroll and records clerk, chief draftsman and stores superintendent, engineering personnel (whether professionally qualified or not), one confidential secretary to each of the following: general manager and chief engineer, secretary-treasurer, transit manager and the senior engineer and students hired during the school vacation period." (36 employees in the unit).

6896-63-R: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 990 (Applicant) v. Dairyland Products (Respondent).

Unit: "all employees of the respondent located in Fort William, save and except foremen, persons above the rank of foreman and office and sales staff." (4 employees in the unit).

6902-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Construction Equipment Company Limited (Respondent).

Unit: "all employees of the respondent working at or out of Sudbury, save and except non-working foremen, persons above the rank of non-working foreman, sales technicians, office staff, cooks, salesmen, clerks, parts department clerks and shippers." (12 employees in the unit).

The Board endorsed the Record in part as follows:

"The respondent contends that it is not an employer in the construction industry within the meaning of The Labour Relations Act. The applicant has informed the Board that it would agree to the issuance of an ordinary certificate. The application will therefore be treated as one not falling within section 92 of The Labour Relations Act. In view of the fact that the respondent has consented to the disposition of the case without a hearing, the Board does not consider it necessary to give further directions in this case."

6906-63-R: International Union of Operating Engineers Local 796 (Applicant) v. Adel Building Corporation (Respondent).

Unit: "all stationary engineers and persons regularly engaged as their helpers in the employ of the respondent at 25 Adelaide Street West, Toronto, save and except the chief engineer and the assistant chief engineer." (4 employees in the unit).

6907-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Schwenger Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen, and persons above the rank of non-working foreman." (2 employees in the unit).

The Board endorsed the Record in part as follows:

"Although the respondent has requested a one county area, having regard to the previous practice of the Board and the pattern of collective bargaining in the area the Board further finds that all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman, constitute a unit of employees of the respondent appropriate for collective bargaining."

6935-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Frisina Construction Company Limited (Respondent).

Unit: "all employees in the employ of the respondent at or working out of the County of Wentworth engaged in the operation of cranes, shovels, bulldozers and similar equipment; hoists; and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and those above the rank of non-working foreman." (2 employees in the unit).

6948-63-R: International Hod Carriers Building and Common Labourers Union, Local # 493 (Applicant) v. Jannison & Scott Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the city of Sault Ste. Marie and the Townships of Prince, Korah and Tarentorus and in the unorganized Townships of Parke and Awenge and in the townships immediately adjacent thereto, save and except non-working foremen and persons above the rank of non-working foreman." (23 employees in the unit).

Certified Subsequent to Pre-Hearing Vote

6722-63-R: The Canadian Union of Operating Engineers, Local 101 (Applicant) v. Consolidated Bldg. Maintenance Co. Ltd. (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Unit: "all stationary engineers and boiler room helpers who are employed by the respondent at O'Keefe Centre in Toronto." (5 employees in the unit).

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| Number of names on revised eligibility list | | 5 |
| Number of ballots cast | 5 | |
| Number of ballots marked in favour of applicant | 5 | |
| Number of ballots marked in favour of intervener | 0 | |

(AGREEMENT OF THE PARTIES)

6736-63-R: Pocketbook Workers Union, Local (9) of the International Leather Goods, Plastics & Novelty Workers Union (Applicant) v. The Compo Company Limited (Respondent).

Unit: "all employees of the respondent at Cornwall, save and except foremen, persons above the rank of foreman and office staff." (9 employees in the unit).

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| Number of names on eligibility list | | 9 |
| Number of ballots cast | 9 | |
| Number of ballots marked in favour of applicant | 9 | |
| Number of ballots marked as opposed to applicant | 0 | |

Certified Subsequent to Post-Hearing Vote

5707-62-R: Office Employees International Union, Local 405, AFL-CIO (Applicant) v. The Ontario-Minnesota Pulp & Paper Company Limited (Respondent).

Unit: "all office and clerical employees in the employ of the respondent engaged at its general office at its mill in the Town of Fort Frances save and except supervisors and persons above the rank of supervisor, confidential secretary to the Vice-President, confidential secretary to the General Manager, confidential secretary to the Resident Manager, confidential secretary to the Manager of Industrial Relations, confidential secretary to the Secretary-Treasurer, confidential secretary to the Woods Production Manager, confidential secretary to the Forest Management Officer, confidential secretary to the Industrial Relations Officer, confidential secretary to the Mill Office Manager, confidential secretary to the Resident Engineer,

management trainees, chemists, professional engineers, cost accountants, general ledger accountant, auditor, cost control analyst, assistant to Woods Production Manager, scalers, houseman, industrial nurse, persons employed on a temporary or casual basis, persons regularly employed for not more than twenty-four hours per week and students hired for the school vacation period or on a co-operative work-study programme. (31 employees in the unit).

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| Number of names on revised eligibility list | | 31 |
| Number of ballots cast | 31 | |
| Number of ballots marked in favour of applicant | 20 | |
| Number of ballots marked as opposed to applicant | 11 | |

6607-63-R: International Union, United Automobile Aircraft and Agricultural Implement Workers of America (UAW) (Applicant) v. Conroy Manufacturing Co. Limited (Respondent) v. Conroy Division, Canadian Steel Workers' Union (N.C.C.L.) (Intervener).

Unit: "all employees of the respondent located at its premises on Catherine Street, bounded by Beech and George Streets, in St. Catharines, save and except foremen, persons above the rank of foreman, office staff and plant protection staff."
(102 employees in the unit).
(UNIT AGREED TO BY THE PARTIES)

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| Number of names on revised eligibility list | | 96 |
| Number of ballots cast | 96 | |
| Number of spoiled ballots | 2 | |
| Number of ballots marked in favour of applicant | 53 | |
| Number of ballots marked in favour of intervener | 41 | |

Certification Dismissed - No Vote Conducted

5697-63-R: International Union of Doll and Toy Workers (Applicant) v. Lido Toys Ltd. (Respondent)
(119 employees).

The Board endorsed the Record as follows:

"Although the applicant has requested leave of the Board to withdraw its application herein, the Board following the usual practice in such cases, dismisses the application."

6383-63-R: National Union of Public Service Employees (Applicant) v. Sault Ste. Marie Separate School Board (Respondent). (3 employees).

6595-63-R: United Brotherhood of Carpenters and Joiners of America, Local 1988 (Applicant) v. Tops Marina Motor Hotel (County of Lanark) (Respondent). (3 employees).

On August 16, 1963 the Board endorsed the Record as follows:

"Having regard to the representations of the applicant contained in a letter dated August 1st, 1963, addressed to the Board and signed by Righard Proctor, business agent of the applicant which are confirmatory of the information contained in the report of the examiner dated August 7th, 1963, and having regard to the decision of the Board in Sonco Steel Products Company Case (Board file no. 5370 -62-R), the Board is satisfied that a bonafide mistake has been made with the result that the proper party has not been named as respondent in the application.

The Board accordingly directs that the name Goldlist Construction Co. Ltd. be struck from the style of cause and substituted by the name Tops Marina Motor Hotel.

The Board further directs the Registrar to serve Tops Marina Motor Hotel with notices of this application.

The Board further directs that any reply of Tops Marina Motor Hotel be filed with the Board not later than August 22nd, 1963."

Board Member, R.W. Teagle dissented and said:

"For the reasons given in Alcan Colony Construction Company Case (Board file no. 5824-63-R), I would have denied the applicant's request to substitute Tops Marina Motor Hotel as the respondent in this matter."

On September 26, 1963 the Board further endorsed the Record as follows:

"Although the applicant requests leave of the Board to withdraw this application the Board, following its usual practice, dismisses the application."

6770-63-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. General Freezer Ltd. (Respondent). (56 employees).

The Board endorsed the Record as follows:

"This is an application for a pre-hearing representation vote. An examiner was appointed to confer with the parties, to examine the records of the applicant and respondent and to make the requisite arrangements in connection with the vote. After the examiner had met with the parties as directed, the representative of the applicant requested leave of the Board to withdraw its application. The Board is of opinion that the request should not be granted but that, having regard to the stage at which the request was made, the application should be dismissed and it is accordingly dismissed."

6799-63-R: International Union of Operating Engineers, Local 793 (Applicant) v. Fielding Construction (Sudbury) Limited (Respondent). (7 employees).

The Board endorsed the Record as follows:

"At the commencement of the hearing in this matter, the applicant asked leave to withdraw its application. After considering the representations of the parties, the Board announced that in accordance with its usual practice, the application would be dismissed.

Should there be another application for certification by the applicant within the next six months covering the employees affected by this application, the Board will, at that time, entertain any representations the parties may wish to make with respect to the timeliness of that application.

The application is dismissed."

6808-63-R: Sheet Metal Workers' International Association, Local Union 562 (Applicant) v. Pernfuss Roofing Contractors (Respondent).

Unit: "all roofers and persons regularly employed as their helpers at Kitchener, save and except non-working foremen, persons above the rank of non-working foreman and persons regularly engaged in the installation of shingles and metal roofing." (10 employees in the unit).

6893-63-R: International Hod Carriers Building and Common Labourers Union of America, Local #1081 (Applicant) v. Dunker Construction Limited (Respondent). (13 employees).

The Board endorsed the Record as follows:

"The respondent submits that the application is untimely, alleging in support thereof that the parties are bound by a subsisting collective agreement. The Board finds that the parties did enter into a collective agreement on April 28, 1958, which agreement was to run until April 30, 1960. The agreement contained an automatic renewal clause, from year to year.

The Board further finds that notice to bargain given by the applicant to the respondent, and dated March 8, 1960, was not a notice under clause 15 of the said collective agreement but, instead, related to another collective agreement between the parties covering a different area. There is no suggestion that any other notice was given under clause 15 at any other time by either party.

During 1960 and up to the summer of 1961, the respondent employed construction labourers in Guelph, the area covered by the collective agreement. The applicant admits that it was 'servicing' these employees.

The Board finds further that the said collective agreement continued in operation up until at least April 30, 1962.

The agreement provides for minimum basic rates. The respondents position is that the construction labourers presently working in Guelph are working under the terms of the agreement. They are being paid at the going rate for the area which is now higher than the minimum basic rate set out in the agreement. In our view, the evidence adduced by the applicant does not support its argument that the agreement did not renew itself in 1962 and again in 1963 and that it is not now in operation. On the contrary, we must find on the basis of all the evidence before us that the said agreement renewed itself under the terms of clause 15 in both 1962 and 1963.

In the result, therefore, this application is untimely.

The application is dismissed."

6938-63-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local 759 (Applicant) v. McNamara Construction of Ontario Ltd. (Respondent). (9 employees).

The Board endorsed the Record as follows:

"The only evidence of membership filed by the applicant trade union in support of the application consists of official receipts signed by the person collecting the money and bearing the countersignatures of the persons from whom the money was collected. The applicant did not file application cards signed by the employees and there is no other evidence of membership or desire for membership filed by the applicant for the persons who countersigned the receipts.

The facts in this case respecting membership are almost identical with those in the Eastern Ontario Tile and Terrazzo Company Limited Case, OLRB Monthly Report, March, 1963, p. 516. In that case the Board held that the evidence of membership did not meet the Board's standards required in these matters.

In these circumstances and pursuant to section 45 of the Board's Rules of Procedure, the application is dismissed."

Applications for Certification Dismissed Subsequent to Post-Hearing Vote

6110-63-R: Canadian Steel Workers' Union, No. 179, National Council of Canadian Labour (Applicant) v. Sehl Engineering Limited (Respondent).

Unit: "all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman, office and sales staff." (142 employees in the unit).

(AGREEMENT OF THE PARTIES)

The Board endorsed the Record in part as follows:

"Following the taking of the representation vote in this matter on July 19th, 1963, the applicant filed a statement of objections and desire to make representations concerning the vote. At the hearing the applicant indicated that it was proceeding only with respect to the allegation that the respondent by the use of certain documents, dated July 11th, 1963, July 12th, 1963, and July 15th, 1963, interfered with the selection of a trade union by employees of the respondent contrary to section 48 of The Labour Relations Act.

The respondent admitted that these documents were prepared and signed by or on behalf of the respondent. The applicant closed its case in support of its allegation by informing the Board that it was proceeding only on the basis of these documents and was presenting no further evidence to the Board. The respondent for its part informed the Board that it was not presenting any evidence. When the case was thus closed on both sides, as counsel for the applicant admits, counsel for the applicant requested that the case be reopened and that he be afforded an opportunity to introduce evidence in support of the allegation against the respondent.

Having regard to the representations of counsel for the applicant at the hearing, it is clear that any evidence that the applicant now seeks to present to the Board was known to the applicant not only prior to the hearing in this matter but prior to the closing of the presentation of evidence in the case and that the applicant, if it had wished to do so, could have had witnesses present at the hearing to give evidence in support of the allegation. In these circumstances we are not prepared to grant leave to the applicant to introduce such evidence after the parties had closed their cases at the hearing before the Board.

Since counsel for the applicant informed the Board that he did not wish to present argument to the Board on the basis of the evidence now before the Board, the Board is not called upon to deal with the applicant's objections concerning the vote."

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| Number of names on revised eligibility list | | 90 |
| Number of ballots cast | 89 | |
| Number of ballots spoiled | 1 | |
| Number of ballots marked in favour of applicant | 21 | |
| Number of ballots marked as opposed to applicant | 67 | |

6498-63-R: General Workers' Local 800 International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America A.F.L.-C.I.O.-C.L.C. (Applicant) v. Green Giant of Canada Limited (Respondent).

Unit: "all employees of the respondent at Tecumseh, save and except supervisors, persons above the rank of supervisor, office staff, sales staff, quality control staff and seasonal employees." (43 employees in the unit).

The Board endorsed the Record in part as follows:

"For the purposes of clarity, the Board declares that the classification 'seasonal employees' comprises the employees of the respondent who are engaged exclusively for the purpose and during the period of the processing of perishable products.

Having regard to the provisions of section 2(b) of The Labour Relations Act, the Board also declares that employees of the respondent employed in agriculture are not included in the bargaining unit.

The Board notes the agreement of the parties that working foremen are employees of the respondent included in the bargaining unit and that fieldmen are not included in the bargaining unit."

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| Number of names on revised eligibility list | | 33 |
| Number of ballots cast | 33 | |
| Number of ballots marked in favour of applicant | 6 | |
| Number of ballots marked as opposed to applicant | 27 | |

6525-63-R: International Union of Electrical, Radio & Machine Workers, AFL-CIO-CLC (Applicant) v. Croven Limited (Respondent).

Unit: "all employees of the respondent at Whitby, save and except foremen, persons above the rank of foreman, office and sales staff and students hired for the school vacation period." (159 employees in the unit).

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| Number of names on revised eligibility list | | 147 |
| Number of ballots cast | 147 | |
| Number of ballots spoiled | 2 | |
| Number of ballots marked in favour of applicant | 52 | |
| Number of ballots marked as opposed to applicant | 93 | |

(AGREEMENT OF THE PARTIES)

6564-63-R: Building Service Employees' International Union, Local 204, AFL CIO CLC (Applicant) v. Ajax and Pickering General Hospital (Respondent).

Unit: "all employees of the respondent employed at its hospital at Ajax, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, foremen, persons above the rank of supervisor or foreman, chief engineer and persons regularly employed for not more than 24 hours per week and office staff." (31 employees in the unit).

(AGREEMENT OF THE PARTIES)

On July 31, 1963 the Board endorsed the Record in part as follows:

"For the purposes of clarity the Board declares that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.

The Board further declares that certified nursing assistants are included in the bargaining unit."

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| Number of names on revised eligibility list | | 29 |
| Number of ballots cast | 31 | |
| Number of segregated ballots (not counted) | 2 | |
| Number of ballots marked in favour of applicant | 9 | |
| Number of ballots marked as opposed to applicant | 20 | |

6652-63-R: United Steelworkers of America (Applicant) v. Sherbrooke Metallurgical Company Limited (Respondent) v. The Canadian Union of Operating Engineers and its Local 106 (Intervener).

Unit: "all employees of the respondent in Sherbrooke Township, save and except foremen, persons above the rank of foreman, office staff, chief chemist and students hired for the school vacation period." (54 employees in the unit).

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| Number of names on revised eligibility list | | 52 |
| Number of ballots cast | 52 | |
| Number of ballots marked in favour of applicant | 13 | |
| Number of ballots marked in favour of intervener | 39 | |

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER 1963

6702-63-R: International Hod Carriers Building and Common Labourers Union, Local # 493 (Applicant) v. Sam Cosentino Ltd. (Respondent). (33 employees).

6786-63-R: International Hod Carriers', Building and Common Labourers' Union of America Local 527 (A.F.L. - C.I.O.) (C.L.C.) (Applicant) v. Birchclair Construction Company (Respondent). (3 employees).

6796-63-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. D. G. Hahn Ltd. (Respondent). (6 employees).

6817-63-R: Gould-Leslie Limited (Brantford) Employees Association (Applicant) v. Gould-Leslie Limited (Respondent). (15 employees).

6832-63-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Fraser-Brace Engineering And/Or Pigott Structures Limited (Respondent). (5 employees).

6850-63-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Ben Bruinsma and Sons Limited (Respondent). (21 employees).

6915-63-R: United Brotherhood of Carpenters and Joiners of America Local Union 1758, Brockville (Applicant) v. M. Sullivan and Son Limited General Contractor (Respondent). (6 employees).

6936-63-R: United Brotherhood of Carpenters and Joiners of America, Local Union 2480 (Applicant) v. Wilchar Construction Limited (Respondent). (6 employees).

APPLICATIONS FOR TERMINATION DISPOSED OF DURING SEPTEMBER 1963

5911-63-R: Ernest William Tombs (Applicant) v. Welders, Public Garage Employees, Motor Mechanics and Allied Workers Union, Local 847, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent). (GRANTED). (120 employees).

(Re: Addison on Bay Ltd., Metropolitan Toronto)

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| Number of persons on revised voters' list No. 1 | 85 |
| Number of ballots cast by persons whose name appeared on voters' list No. 1 | 84 |
| Number of spoiled ballots | 1 |
| Number of segregated ballots | 4 |
| Number of ballots marked in favour of respondent | 24 |
| Number of ballots marked against respondent | 55 |

6500-63-R: A. Vandeven, L. Miller, G. McDonald, J. Ringer
(Applicants) v. International Union of Operating Engineers,
Local 944 (Respondent) (GRANTED) (4 employees)

(Re: Canadian Westinghouse Company Limited,
London, Ontario)

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| Number of names on revised eligibility list | | 4 |
| Number of ballots cast | 4 | |
| Number of ballots marked in favour of respondent | 0 | |
| number of ballots marked as opposed to respondent | 4 | |

6520-63-R: William Wilson (Applicant) v. United Electrical
Radio and Machine Workers of America (U.E.) (Respondent).
(GRANTED) (14 employees).

(Re: Autolave (Kingston) Limited)

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| Number of names on revised eligibility list | | 22 |
| Number of ballots cast | 22 | |
| Number of spoiled ballots | 1 | |
| Number of segregated ballots (not counted) | 5 | |
| Number of ballots marked in favour of respondent | 2 | |
| Number of ballots marked as opposed to respondent | 13 | |

6638-63-R: All employees of Fisher & Ludlow (Can.) Ltd.
Kenilworth Ave. N. Hamilton, Ont. (Applicant) v. International
Union United Automobile, Aircraft and Agricultural Implement
Workers of America U.A.W. (Respondent). (GRANTED)
(29 employees).

(Re: Fisher & Ludlow (Canada) Limited,
Hamilton, Ontario).

The Board endorsed the Record in part as follows:

"Having regard to the representations made by
the respondent to the Board in its letter dated August
29th, 1963, the Board is satisfied that the respondent
does not desire to continue to represent the employees
of Fisher Ludlow (Canada) Limited in the bargaining
unit.

Pursuant to section 43(6) of The Labour Relations
Act, the Board declares that the respondent no longer
represents the employees of Fisher & Ludlow (Canada)
Limited at Hamilton for whom it has heretofore been
the bargaining agent."

6696-63-R: Harold Shibley (Applicant) v. Teamsters Union Local 847, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (GRANTED) (96 employees).

(Re: Elgin Motors Co. Ltd.,
Toronto, Ontario).

6743-63-R: Helmut Kukemueller (Applicant) v. Welders, Public Garage Employees, Motor Mechanics and Allied Workers Union Local 847, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent). (GRANTED) (74 employees).

(Re: British & American Chevrolet
Oldsmobile Ltd.,
Metropolitan Toronto, Ontario).

The Board endorsed the Record in part as follows:

"Pursuant to section 43(6) of The Labour Relations Act, the Board declares that the respondent no longer represents the employees of British & American Chevrolet Oldsmobile Ltd. in Metropolitan Toronto for whom it has heretofore been the bargaining agent."

6766-63-R: Edward Peach (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union 880, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent). (DISMISSED) (8 employees)

(Re: Lopatin Brothers Furniture, Limited,
Windsor, Ontario).

6833-63-R: A. W. Poulter (Applicant) v. Office Employees International Union, Local 131 (Respondent) v. Dunlop Canada Limited (Intervener). (WITHDRAWN) (76 employees).

(Re: Dunlop Canada Limited,
Whitby, Ontario.)

6844-63-R: Harold Smithson (Applicant) v. The Teamsters' Local Union No. 230, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Respondent) v. Dundas Construction Company Limited (Intervener) (DISMISSED)

(Re: Dundas Construction Company Limited,
Rexdale P.O., Ontario).

6845-63-R: Gino Marsico (Applicant) v. International Hod Carriers' Building and Common Labourers' Union of America Local 183 (Respondent) v. Dundas Construction Company Limited (Intervener) (DISMISSED) (12 employees)

(Re: Dundas Construction Company Limited,
Rexdale P.O., Ontario)

The Board endorsed the Record as follows:

"Conciliation services were granted by the Board to the respondent, International Hod Carriers' Building and Common Labourers' Union of America Local 183, and the intervener, Dundas Construction Company Limited, on February 27, 1963. It is clear that 12 months have not elapsed from the date of the granting of conciliation services. In view of the provisions of section 46, subsection 2, paragraph b of The Labour Relations Act, the application would appear to be untimely.

Although this is an application effecting a trade union and an employer in the construction industry, section 96 of The Labour Relations Act does not appear to have any application to this case. Even if it could be argued that the collective agreement which became effective on the 22nd day of June, 1959, is a first agreement within the meaning of its words as set out in subsection 2 of section 96 of the Act, it is clear that this application was not brought after the 305th day of the operation of that collective agreement and before the 365th day of its operation. In these circumstances and pursuant to section 45 of the Board's Rules of Procedure, the application is dismissed."

APPLICATIONS FOR DETERMINATION UNDER SECTION 79

2446-61-M: The International Hod Carriers', Building and Common Labourers' Union of America Local 527 (A.F.L. - C.I.O.: C.L.C.) (Applicant) v. Geo. A. Crain & Sons Ltd., Ferini Limited, J.A. Jones Const. Co. (Canada) Ltd., Angus-Robertson Ltd., Geo. A. Fuller Co., C.A. Johannsen & Sons Ltd., Ross-Meagher Ltd., V.K. Mason Const. Ltd., Doran Construction Co. (1960) Ltd., Robert McAlpine Ltd., Robert et Frere, Shore & Horwitz Const. Co. Ltd., Able Const. Co. Ltd., James More & Sons Ltd., L.M. Sauve Ltd.
(Respondents).

The Board endorsed the Record as follows:

"For our reasons given in writing we find that the persons designated as watchmen are not guards employed to protect the property of their employer within the meaning of section 9 of The Labour Relations Act."

Board Member, R.W. Teagle dissented and said:

"I dissent. For my reasons given in writing I would have found the watchmen in question to be guards employed to protect the property of their employer within the meaning of section 9 of The Labour Relations Act."

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF AGREEMENT

6599-63-M: Bricklayers, Masons' and Plasterers' International Union of America, Local No. 12, Ontario (Applicant) v. Able Construction (Kitchener) (Respondent).

The Board endorsed the Record as follows:

"The question referred to the Board under section 34(5) of The Labour Relations Act is whether or not there is a collective agreement binding the Bricklayers', Masons' and Plasterers' International Union of America, Local No. 12, Ontario (hereinafter referred to as 'the union') and Able Construction (hereinafter referred to as 'the company').

The union entered into a collective agreement with a number of employers which provided that 'it shall remain in force for a period of one year from May 1st, 1958, and shall continue in force from year to year, unless in any year notice of termination or proposed change is given at least 120 days prior to May the first'. On May 11th, 1959, the company affixed its signature to that agreement. At the same time the union and the company signed a further document which effected certain amendments to 'their collective agreement' for the period from May 1st, 1959, to May 1st, 1960. We can only conclude, and, indeed, the company admits, that the union and the company entered into a collective agreement within the meaning of The Labour Relations Act, the terms of which were contained in the first-mentioned agreement. At the time of execution of the collective agreement the company was engaged in construction work in the Kitchener area and the agreement was intended to apply to this area. The company continued its operations in the Kitchener area until the fall of 1960 and, during that period, observed the terms of the collective agreement. Thereafter, and until July or August, 1961, the company ceased its operations in the Kitchener area and operated solely in the Lindsay area which was not covered by the

collective agreement with this union. In July or August, 1961, the company resumed operations in the Kitchener area but did not observe the terms of the collective agreement. Neither the company nor the union has ever given notice of termination or of proposed change as provided for in the agreement. In March, 1963, a representative of the union approached the company concerning the collective agreement. Subsequently the union representative met with the partners of the company on two occasions. During their discussions the company took the position that the collective agreement was no longer binding on it while the union, in an attempt to resolve the matter, proposed the signing of a new agreement which the company refused to do.

The company submits that the collective agreement is no longer in effect and that the union has abandoned its bargaining rights. The union relies on the duration clause to say that the collective agreement has continued in effect and on the interruption in the respondent's operations in the Kitchener area to say that it has not abandoned its bargaining rights.

With respect to the submission of the company that the union has abandoned its bargaining rights, this Board has held that a trade union which has 'slept on its rights' for an extended period may be held to have abandoned its bargaining rights. See the Guelph Cartage Company Case (1955) C.C.H. Canadian Labour Law Reporter, 1955-1959 Transfer Binder, ¶ 16,081; C.L.S. 76-479; the Halliday Fuels Ltd. Case (1955) C.C.H. Canadian Labour Law Reporter, 1955-1959 Transfer Binder, ¶16,021; C.L.S. 76-483; and the Canada Sand Paper Ltd. Case (1958) C.C.H. Canadian Labour Law Reporter, 1955-1959 Transfer Binder, ¶ 16,111; C.L.S. 76-601. In the matter before us, there is no evidence that the union expressly abandoned its bargaining rights; accordingly, we must determine whether, in all the circumstances of this case, the union has abandoned its bargaining rights. The circumstances are as follows: under its terms the collective agreement remained in force until May 1st, 1960, and, by its terms, would continue in force for successive one-year periods if no notice of termination or amendment was given.

During the first and second of these one-year periods, that is, between May 1st, 1960, and May 1st, 1962, there was an interruption in the company's operations in the area affected by the agreement from the fall of 1960 to July or August, 1961. Thus it is only from the date in July or August, 1961, on which the company resumed its operations in the Kitchener area until March, 1963, the date on which the union representative first approached the company, that it can be argued that the union has "slept on its rights". Having in mind that the parties agreed to be bound by a collective agreement that would continue in effect until terminated by one or the other of them, and that the company ceased its operations in the area affected by the agreement during a considerable part of the time that the agreement has been allowed to continue in force, we are not prepared to hold that the union has abandoned its bargaining rights in this case.

Having regard to the duration clause of this collective agreement, we are of opinion that it would cease to operate on its anniversary date in any year only if notice of termination or amendment was given in accordance with the terms of its duration clause and, in the absence of such notice, would continue in force for successive periods of one year subject to termination or amendment upon proper notice. See the decision of the Board in the Hield Brothers Ltd. Case (1957) C.C.H. Canadian Labour Law Reporter, 1955-1959 Transfer Binder, ¶16,072; C.L.S. 76-549. Since no notice has been given by either party at any time, it follows that, under its terms, the collective agreement has continued in force.

Our finding on the reference, therefore, is that there is a collective agreement which is binding upon the Bricklayers', Masons' and Plasterers' International Union of America, Local No. 12, Ontario and Able Construction.

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

6871-63-U: The Hydro-Electric Power Commission of Ontario (Nuclear Power Demonstrator Station at Rolphont, Ontario) (Applicant) v. G.T. Adams et al (Respondents). (WITHDRAWN)

6913-63-U: Major Masonry and Construction Limited (Yorkdale Shopping Plaza) (Applicant) v. The Bricklayers' Union Number 2 of Toronto, Ontario (Affiliated with the Bricklayers', Masons', Plasterers' International Union of America (Respondent)). (GRANTED)

The Board endorsed the Record as follows:

"It is abundantly established on the evidence before us that the respondent union, through its agent, John Zanussi, called or authorized a strike engaged in by certain employees of the applicant working on the Yorkdale Shopping Plaza on Monday, September 16th, 1963. In our view the conclusion is inescapable that this strike, which we must find to be unlawful, was called or authorized by the respondent and participated in by the employees for the sole purpose of compelling the applicant to cease subcontracting certain brick cleaning work to an outside contractor.

The evidence before us indicates that the applicant had a reasonable basis for the belief, which we find it honestly entertained, that its own employees were unable to do the brick cleaning work in question and that such work required specialized methods and cleaning materials not available to its employees. In these circumstances, and we are not to be taken as expressing any opinion on the merits of the dispute, it appears that the applicant had at least a plausible argument that it was entitled under the terms of the collective agreement to subcontract this work to another firm which had the facilities and specialized personnel capable of doing the work. While the union took the position that the applicant was not entitled to subcontract this work and relied on the terms of the collective agreement as supporting its position, it did not see fit to utilize the grievance procedure, as it was obliged to do under the collective agreement, to test the right of the applicant to subcontract this work.

The unlawful strike in this case did not end because of any settlement of the dispute between the parties, but because the general contractors on the project suspended the brick cleaning work. There is no doubt that this work will shortly have to be resumed again whether by the same subcontractor or another contractor. In any event, with the dispute still unresolved it is fair to conclude that the applicant has a reasonable fear that its operations may again be interrupted by another strike. This being so, and having regard to the principles referred to in the Ball Brothers Case, (1957) C.C.H. Canadian Labour Law Reporter, Transfer Binder 1955-59, 16,091, C.L.S. 76-576 and in the McNamara-Raymond Case, (1961) C.C.H. Canadian Labour Law Reporter, vol. 1, 16,192, we are compelled to conclude that a declaration ought to issue in this case.

In the result we declare that the strike called or authorized by the respondent and engaged in by certain employees of the applicant working on the Yorkdale Shopping Plaza on Monday, September 16th, 1963, was an unlawful strike."

Board Member, E. Boyer dissented and said:

"I dissent. In my opinion the evidence does not establish that the respondent called or authorized the work stoppage which occurred on September 16th, 1963. I would have dismissed the application."

APPLICATIONS FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING SEPTEMBER 1963

6869-63-U: National Union of Public Employees, local 185 (Applicant) v. Township of Etobicoke (Respondent). (WITHDRAWN)

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER 1963

5994-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Anglo Construction (Toronto 18) (Respondent). (WITHDRAWN)

5996-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Yorkview Contractors Limited (Toronto 3) (Respondent). (WITHDRAWN)

6004-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Di San Construction (Etobicoke) (Respondent). (WITHDRAWN)

6025-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Carrom Contractors (Scarborough) (Respondent). (WITHDRAWN)

6032-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. S. Falsetti & Son (Toronto 2-B) (Respondent). (WITHDRAWN)

6034-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Frank Grieco & Son (Weston) (Respondent) (WITHDRAWN)

6035-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Iocco Brothers (Toronto 19) (Respondent) (WITHDRAWN)

6041-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Nu-Pave Construction (Toronto 18) (Respondent) (WITHDRAWN)

6044-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Riverstone Construction (Toronto 15) (Respondent). (WITHDRAWN)

6045-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Royce Contractors (Downsview) (Respondent). (WITHDRAWN)

6049-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Wilmar Contractors (Downsview) (Respondent). (WITHDRAWN)

6019-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Salvatore Brothers Brothers (Toronto 10) (Respondent). (DISMISSED)

6023-63-U: Operative Plasterers' & Cement Masons' International Association of the United States and Canada (Applicant) v. Panacci Contracting (Islington) (Respondent). (DISMISSED)

6664-63-U: Toronto Newspaper Guild, Local 87, American Newspaper Guild (Applicant) v. W.D. Cotton, Publisher & General Manager of the Daily Journal-Record, Oakville, Ontario (Respondent). (GRANTED)

The Board endorsed the Record as follows:

"The Board consents to the institution of a prosecution against W. D. Cotton for the following offences alleged to have been committed:

That W. D. Cotton, being publisher and general manager of the Daily Journal-Record, in the Town of Oakville, did on Monday, July 15th, 1963, interfere with the selection of a trade union, contrary to sections 48 and 69 of The Labour Relations Act, R.S.O. 1960, c. 202, as amended.

That W. D. Cotton, being publisher and general manager of the Daily Journal-Record, in the Town of Oakville, did on Monday, July 15th, 1963, seek by threat of dismissal to compel employees, to wit employees of the Daily Journal-Record in the Town of Oakville, Ontario, to cease to exercise their rights under The Labour Relations Act, namely, to join a trade union of their own choice and to have such union bargain collectively on their behalf, contrary to sections 50(c) and 69 of The Labour Relations Act, R.S.O. 1960, c 202, as amended.

The appropriate document of consent will issue."

Board Member, H.F. Irwin dissented and said:

"I dissent. I would not have granted consent but would have dismissed the application."

6831-63-U: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Fraser/Brace Engineering And/Or Pigott Structures Limited (Respondent). (WITHDRAWN)

6856-63-U: Ontario Hydro Employees' Union, Local 1000, N.U.P.S.E. -C.L.C. (Applicant) v. The Hydro Electric Power Commission of Ontario (nuclear generating station at Douglas Point) (Respondent). (WITHDRAWN)

APPLICATIONS UNDER SECTION 65 DISPOSED OF DURING SEPTEMBER 1963

6476-63-U: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Local No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Index Distributors Limited. (Respondent).

6531-63-U: Sun Parlour Home Employees Union, Local Union #860, National Union of Public Employees, (C.L.C.) (Complainant) v. Corporation of the County of Essex (Respondent).

The Board endorsed the Record as follows:

"The complainant alleges that the aggrieved person Mrs. Carrie Wigle, an employee of the respondent, was discharged from her employment by Mr. T. W. Morris, the superintendent of the Sun Parlour Home because of her appointment to the union's negotiating committee, contrary to the provisions of section 50 of The Labour Relations Act.

The respondent alleges that Mrs. Wigle was discharged because of her inability or refusal to do work assigned to her by department heads at the Sun Parlour Home and because of her general conduct, behaviour and attitude. It is further alleged that at no time was the respondent aware of the appointment of the aggrieved person as a member of the negotiating committee of the complainant union.

Carrie Wigle commenced her employment at the Sun Parlour Home on June 11th, 1962. During the first two months of her employment she worked in the kitchen and the laundry. On August 14th, 1962 she was transferred to the housekeeping department where she remained until the date of her discharge. She has been a member of the union since the fall of 1962. On June 12th, 1963 she was appointed to fill a vacancy in the union's negotiating committee. On July 18th, 1963 Morris asked Mrs. Wigle to submit her resignation which she declined to do.

On June 20th Mrs. Wigle was given two weeks notice and discharged by Morris.

Fellow employees of Mrs. Wigle testified that her appointment to the union negotiating committee was freely talked about and was common knowledge in the Home. None of these employees, however, had informed any member of management of her appointment and none had personal knowledge that any member of management was aware of her appointment. Morris and all other members of the supervisory staff who appeared as witnesses at the Board hearing denied having any knowledge of Mrs. Wigle's appointment to the union's negotiating committee prior to the date of her discharge.

The evidence of Mrs. Wigle's fellow employees is that they had no criticism of her work or her conduct and had heard no criticism of her by any member of management. All members of the supervisory staff of the Home who gave evidence, however, testified that at no time had she been a satisfactory employee. The nature of the complaints was that she talked too much, distracted other employees from their work, sat on patients' beds and talked to them when she was supposed to be working, left her floor without permission, did not thoroughly carry out her duties, had an insolent attitude, and on occasion refused to carry out instructions. Mrs. Lillian Lemonte, the head of the housekeeping department under whom Mrs. Wigle worked during most of her employment at the Home, was particularly critical of Mrs. Wigle's job performance and her attitude. Mrs. Lemonte testified that she regularly reported Mrs. Wigle's shortcomings to Morris. The other department heads under whom she had worked also testified that they had complained to Morris with regard to Mrs. Wigle. Morris testified that the immediate cause of her discharge was that he had observed her sitting in the board room of the Home looking at magazines and on the same day saw her sitting with patients in the television room, when she was on duty. Mrs. Wigle's evidence in this respect is in conflict with that of Morris. A few days later he saw her sitting at a table with patients outside the Home during working hours. The following day, he asked for her resignation.

On only one occasion, in September 1962, had Morris reprimanded Mrs. Wigle with regard to the manner in which she was carrying out her duties. Mrs. Lemonte testified that she admonished Mrs. Wigle herself on occasion. From her evidence it appears that her rebukes were of a mild nature. Mrs. Wigle acknowledges the reprimand by Morris in September, 1962, but denied having been criticized at any other time.

Although we are not called upon to make a finding as to whether Mrs. Wigle properly executed her job responsibilities, it is relevant to the determination of the complainant's allegation. It appears, despite the fact that her fellow employees had no criticism of her, that Mrs. Wigle was by no means an entirely satisfactory employee. We would add that we feel the shortcomings attributed to Mrs. Wigle were in instances considerably magnified in the testimony of her supervisors. We also have some reservation concerning the evidence of Morris with respect to Mrs. Wigle's conduct.

The issue to be determined by the Board in the instant case, however, is whether Mrs. Wigle was discharged as a result of her appointment to the union negotiating committee. There is not sufficient evidence before us upon which we are able to make a finding that the management of the Home knew of her appointment to the union negotiating committee. Although employees testified her appointment was general knowledge, there is no evidence that any member of management was informed of her appointment and all of the supervisory staff denied having knowledge of her appointment. Moreover she had not attended a negotiation meeting prior to her discharge. On the other hand, we do have evidence that she was not a satisfactory employee. Having regard to all the evidence before us the complainant has failed to satisfy the Board that Carrie Wigle was discharged by the respondent contrary to the provisions of section 50 of The Labour Relations Act.

We would add that the fact that Morris did not warn or reprimand Mrs. Wigle between September 1962 and the date of her discharge, despite his own evidence that he received regular complaints concerning her, reflects on the manner in which he exercised his supervisory authority. However, this is not a matter which we are called upon to consider."

The complaint accordingly is dismissed.

Board Member, E. Boyer dissented and said:

"I dissent. The fact that Morris did not reprimand or inform Carrie Wigle that her work was not satisfactory since September 1962, in my opinion, is clear evidence that he had no legitimate complaints against her. In these circumstances, her discharge eight days after her appointment to the union negotiation committee leads me to the conclusion that the sole reason for her discharge was her union activity, and I would have so found."

6572-63-U: Warehousemen and Miscellaneous Drivers Local Union 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Export Packers Company Limited (Respondent).

6633-63-U: United Steelworkers of America (Complainant) v. Universal Sections and Mouldings Limited (Respondent).

6655-63-U: Retail, Wholesale and Department Store Union (Complainant) v. London Answering Service (Respondent).

6662-63-U: Warehousemen and Miscellaneous Drivers' Union, Local 419, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Mad Hatter Snack Foods Division of Federal Farms Limited (Respondent).

The Board endorsed the Record as follows:

"On the basis of all the evidence before it, the Board is not satisfied that Raymond Poisson was discharged contrary to The Labour Relations Act.

The complaint is therefore dismissed."

6663-63-U: United Electrical, Radio & Machine Workers of America (UE) (Complainant) v. Ferranti Electronics (Data Systems) (Respondent).

6681-63-U: International Chemical Workers Union (Complainant) v. Max Factor and Company (Respondent).

6807-63-U: United Steelworkers of America (Complainant) v. Hodgson's Steel & Ironworks Ltd. (Respondent).

The Board endorsed the Record as follows:

"This complaint is withdrawn at the request of the complainant with the consent of the respondent in accordance with the terms of the minutes of settlement filed by leave of the Board."

6819-63-U: Retail Clerks International Association (Complainant) v. Sentry Department Stores Limited (Respondent).

6843-63-U: Fur Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America (Complainant) v. Kent Fur Co. (Respondent).

6846-63-U: Edmund Scafe (Complainant) v. Walter Reynolds (Windsor) (Respondent).

The Board endorsed the Record as follows:

"The report of the Field Officer, Mr. A.A. Morrow, in this matter discloses two points upon which the complainant rests his complaint: (i) that a settlement of a prior complaint has not been complied with by the respondent according to its terms, and (ii) that the complainant was laid off by the respondent 'out of seniortiy'. In so far as the first point of the complaint is concerned, the evidence before us is that the settlement was in fact complied with by the respondent. The second point of the complaint would appear to be one to be dealt with under the grievance procedure of the collective agreement. See Heist Industrial Services Case, (1962) C.C.H., Canadian Labour Law Reports 16,263.

Having regard to these conclusions, the Board does not deem it advisable to inquire further into the complaint by means of a hearing by the Board. The complaint is accordingly dismissed."

6912-63-U: International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada Local #669 Kirkland Lake & Timmins Ontario (Complainant) v. Famous Players Canadian Corporation, Timmins Theatres Limited (Respondent).

CERTIFICATION INDEXED ENDORSEMENTS

6193-63-R: The Lumber and Sawmill Workers' Union, Local 2995 of The United Brotherhood of Carpenters and Joiners of America A.F.L.-C.I.O.-C.L.C. (Applicant) v. Spruce Falls Power & Paper Company Limited (Respondent). (GRANTED SEPTEMBER 1963)

The Board endorsed the Record in part as follows:

"The first question to be determined in this case is whether the persons in the bargaining unit sought by the applicant are excluded from the Act by virtue of the provisions of section 2 as being employed in agriculture or horticulture.

The parties agree that the following statement of fact filed at the hearing by the respondent accurately describes the operation of the company's forest nursery:-

The Spruce Falls Forest Nursery was established in 1947 to supply trees for the reforestation of the cutover on the limits of the Spruce Falls Power & Paper Company Ltd. This nursery has been built and is operated by the company without government aid or subsidy. Since its establishment in 1947, the Spruce Falls nursery has operated outside the jurisdiction of the union. Local 2995 applied for certification in 1956, but was turned down by this Board. Conditions have not changed since that time.

At the forest nursery, trees, mainly spruce and jackpine, are grown from seed to four years of age. The seed is sown in very carefully prepared seed beds in late October. The seeds germinate the following spring and are grown for two years in the seed beds. They are then lifted, graded and transplanted. The transplanting is done by an adapted celery transplanter. This transplanting gives the seedlings more space for the development of a good root system. At four years, i.e. - after two years in the transplant lines, the trees are lifted, again graded, and the acceptable stock is baled and shipped to the bush for planting on those parts of the cutover where natural regeneration of spruce is insufficient.

The planting in the cutover is not done by nursery employees, but by woods workers who are transferred to planting from other woods jobs such as cutting. Thus the planting in the bush is not included in the nursery operations which are being considered by this board.

Reverting now to the nursery operations, the equipment in use is farm equipment and the work is very seasonal and very dependent upon the weather. The fields are operated on a four year rotation. During the first two years cover crops such as rye, vetch, oats or buckwheat are grown and ploughed under. Fertilizer is added and the soil is worked up to a good tilth. During the next two years trees are grown and the cycle is then repeated.

While the trees are being grown, the seed beds and fields are irrigated regularly by means of a portable irrigation system. The fields are cultivated and weeded and are treated as necessary to control insects and disease.

The nursery labour force consists principally of labour drawn from the farming area around Moonbeam and comprises about 45% women. The forest nursery opens in late April with two or three experienced men engaged to do the preparatory work. Once the fields and soil are free of frost and snow, transplanting begins and the labour force rises to about 35 or 40 for two or three weeks. Transplanting is very seasonal and dependent on the weather. The help is mainly temporary, although most return year after year. By late May, transplanting is completed and the labour force drops sharply and in June is reduced to the regular group of six men and six women.

This crew is relatively stable for the balance of the summer, although the women do not necessarily work full time. There may be a small increase in force during the autumn, but for the last few years this has been only one to three. There are only approximately twelve persons who are employed for the full summer season at the nursery.

Based on 1962 man hours, the nursery work is divided as follows:

| | |
|---|------------|
| Care of fields, soil improvement, fertilization | 9% |
| Collection of tree seed from, and care of, seed orchard | 4 |
| Seeding | 5 |
| Weeding & spraying - for control of weeds, insects & disease | 10 |
| Irrigation | 2½ |
| Transplanting | 24 |
| Inventory counts and measurements | 2½ |
| Harvesting and baling | 18 |
| Nursery Research | 5 |
| Grounds & building maintenance | 12 |
| Nursery woodlot | 4 |
| Public relations (maintenance of picnic grounds demonstration tours etc.) | 2 |
| Paid holidays | 2 |
| | <hr/> 100% |

A previous application for certification (Board file No. 10028) made by this applicant in 1957 to be certified as bargaining agent for a unit of the respondent's employees at its forest nursery, was dismissed on the grounds that the persons concerned were engaged in agriculture and consequently were excluded from the operation of The Labour Relations Act.

Subsequent to the decision of the Board in The Spruce Falls Power & Paper Company Limited Case in 1957, the Labour Relations Amendment Act was passed in 1960, amending section 2 of the Act by adding thereto a new sub-section. The material parts of section 2 as amended now state:-

2. This Act does not apply,

(b) to a person employed in agricultural --;

(c) to a person, other than an employee of a municipality or a person employed in silvaculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture.

In considering the purpose and scope of this amendment the Board in the McLean-Feister Limited Case, Ontario Labour Relations Board, Monthly Report, November, 1962, p. 290 at p. 293, pointed out that,

--the Select Committee on Labour Relations its report dated July 10, 1958, recommended under the heading 'Horticulture' that The Labour Relations Act should be amended 'to permit those persons who are now employed by Nursery Companies, by Reforestation programmes, and Landscaping, to come under the provisions of this Act'. While the Act was subsequently amended, the amendmendment did not go nearly so far as the recommendation. In the words of the Commentary on The Labour Relations Amendment Act, 1960, which document was handed out to all members of the Legislature on the introduction of the Bill in the House. 'The Act is extended to employees of municipalities engaged in horticulture (e.g. employees of parks departments) subject to section 78 of the present Act, to persons employed in reforestation programs, and to employees -- of employers who engaged in horticulture only as a 'side line', e.g., employees who look after flower beds and lawns of industrial plants'.

Apart altogether, however, from any consideration of the recommendations of the Select Committee and the Commentary on The Labour Relations Act, 1960, the language of the amendment itself when construed with section 2 as a whole, can, in our view, only be interpreted to mean that persons employed in silvaculture are not excluded from the operation of the Act under the term agriculture.

1. The first of these is the
fact that the majority of the
population of the country is
of African descent.

2. The second is the fact that
the majority of the population
is of African descent.

3. The third is the fact that
the majority of the population
is of African descent.

4. The fourth is the fact that
the majority of the population
is of African descent.

5. The fifth is the fact that
the majority of the population
is of African descent.

In other words, even if it can be said that silvaculture is one phase or aspect of agriculture, as argued by the respondent, the Act as amended now makes it plain that persons employed in silvaculture are under The Labour Relations Act.

It remains to consider whether the employees in question are employed in silvaculture. In the Shorter Oxford English Dictionary sylviculture is defined as,

The cultivation of woods or forests; the growing and tending of trees as a department of forestry.

In the Dictionary of Occupational Titles vol. 1, 2nd ed., prepared by the Division of Occupational Analysis, United States Employment Service, silviculturist is defined as one who,

Specializes in establishment and care of forest stands; Establishes forest stands through the operation of trees nurseries and by thinning forests to encourage natural growth of sprouts or seedlings of desired varieties (Plant Breeder). Conducts research in problems of forest propagation and culture, such as tree growth rate, effects of thinning on forest yield, duration of seed viability, and effects of fire and grazing on growth, seed production, and germination of different species. Develops techniques for measurement and identification of trees.

It was argued by the respondent that silvicultural work is what is done in the forest itself and not what is done in the company's forest nursery. In determining whether or not the work done falls within what is meant by silviculture we think it is more important to look at what is being done rather than where it is done. The forest nursery is operated for the sole purpose of supplying trees for the reforestation of the cutover on the limits of the respondent company. In this respect it is an integral part of the company's reforestation operations. Even if the employees of a nursery confined to the production of trees in other circumstances or for other purposes would be considered to be employed in agriculture or horticulture, and we refrain from expressing any opinion one way or the other as to that, we must find in the circumstances of this case, that The Labour Relations Act does apply to the persons in question employed at the company's forest nursery."

Board Member H.F. Irwin dissented and said:

"I dissent.

This is an application by The Lumber and Sawmill Workers' Union, Local 2995 (hereinafter referred to as the applicant) to be certified as bargaining agent for all employees of the Spruce Falls Power & Paper Company Limited (hereinafter referred to as the respondent) at its forest nursery in the Township of Fauquier save and except foremen, persons above the rank of foreman and office staff.

A previous application in respect to the same bargaining unit was made by this applicant on May 16th, 1956. A hearing was held on May 30th, 1956. At the request of the Board, the respondent subsequently made a written submission as to whether the persons in the proposed bargaining unit were employed in 'agriculture' or 'horticulture'. The applicant was supplied with a copy of the submission and made a reply in writing.

After a careful review and full consideration of all the evidence, the Board issued its decision on June 10th, 1957 which reads as follows:-

We find that the persons whom the applicant seeks to represent as bargaining agent in this case are persons engaged in agriculture, a broad term which includes that part of the respondent's operations with which we are here concerned. Consequently, they are not 'employees' for the purposes of The Labour Relations Act. The application is dismissed. (emphasis added)

At the hearing on June 11th, 1963, in respect of the instant application, it was agreed by the parties that there has been no change in the field operations or employment practices at the nursery since the time of the previous application in 1956. A detailed description of these operations and practices was filed by the respondent at the hearing on June 11th and is set out verbatim in the majority decision. The applicant agreed with the statements made therein. Consequently, there was a heavy onus on the applicant to show why the Board should vary its previous decision which stated that the persons whom the applicant seeks to represent are persons engaged in agriculture. In my opinion, the applicant did not discharge this onus.

Prior to the 1960 amendment, subsection (b) of section 2 of the Act reads as follows:-

2. This Act does not apply,

(b) to any person employed in agriculture, horticulture, hunting or trapping.
(emphasis added)

The amendment deleted the word 'horticulture' from subsection (b) and inserted a new subsection (bb) which is now subsection (c) (R.S.O. 1960) and reads as follows:-

(c) to a person, other than an employee of a municipality or a person employed in silvaculture, who is employed in horticulture by an employer whose primary business is agriculture or horticulture.
(emphasis added)

The only new issue before the Board in the instant application is whether or not the persons in the proposed bargaining unit at the respondent's tree nursery are employed in silviculture. Unless the Board can answer this question in the affirmative, the previous decision that these persons are employed in agriculture must stand and the application be dismissed.

WHAT IS SILVICULTURE?

The recognized North American text book on forest terminology is entitled 'Forest Terminology' and is published by The Society of American Foresters, Washington, D.C. At page 77 of the 1958, Third Edition, of this text book, the following definitions are given for silvics and silviculture:-

Silvics:- The life history and general characteristics of forest trees and stands, with particular reference to environmental factors.

Silviculture:- The art of producing and tending a forest; the application of the knowledge of silvics in the treatment of a forest; the theory and practice of controlling forest establishment, composition, and growth.
(emphasis added)

In his well-known book entitled 'Theory and Practice of Silviculture' Frederick S. Baker, Associate Professor of Forestry, University of California, on page 1 defines silviculture as follows:-

Silviculture - Broadly speaking, silviculture may be defined as the art and science of growing and producing stands of timber on a basis of permanency. As indicated by this definition, silviculture includes two rather distinct phases;

- (1) reproducing the forest, and
- (2) tending the forest crop after it has been established.

On this account, the great subject of artificial reproduction - establishing forests by planting trees raised in the nursery or artificially sowing the seed - will not be discussed, for economic conditions make it, a matter of rather academic importance in many parts of the U.S.A. Furthermore, it is a special subject in itself, abounding in matters of specific technique and would require a volume as large as this one to do justice to it alone.
(emphasis added)

At page 21 of the text book entitled 'Seeding and Planting in the Practice of Forestry' by James W. Toumey, M.A., F.D., Sc. D., Professor of Silviculture, Yale University, silviculture is defined as follows:-

Silviculture: Silviculture is that branch of forestry which deals with the establishment, development, and reproduction of forests. It is an art which depends for its intelligent practice upon the principle of silvics. Silvics may be defined as the whole body of observed facts that relate to the life of single trees and of the forest as a whole, so arranged and classified as to serve as a basis for the practice of silviculture. Silvics is a science in so far as it establishes relationships and formulates deductions which are universally true regarding the life of the forest. It aims to interpret forest vegetation as acted upon by 'locality', i.e. by the factors of the site such as climate, soil and animal life.

'The Practice of Silviculture' by David Kartyn Smith, Associate Professor of Silviculture, Yale University, is widely recognized as an authoritative text book on this subject. The 1962, Seventh Edition, is the continuation of a work published as a first edition in 1921 by the eminent silviculturist, Professor Ralph C. Hawley.

Chapter 1 of this text book is entitled 'Silviculture and Its Place in Forestry'. The following extracts from this Chapter greatly assist the layman in appraising the true meaning of silviculture and where the practice of silviculture is carried out.

Page 1 - Chapter 1

Silviculture and its place in forestry.

Silviculture has been variously defined as: the art of producing and tending a forest; the application of the knowledge of silvics in the treatment of a forest; the theory and practice of controlling forest establishment, composition, and growth. The subject matter of silvicultural practice consists of the various treatments of forest stands that may be applied to maintain and enhance their productivity. The duties of the forester with respect to silviculture are to analyze the natural and economic factors bearing on each stand under his care and then to devise and conduct the treatments most appropriate to the objective of management.

Silviculture occupies a position in forestry somewhat analogous to that of agronomy in agriculture, in that it is concerned with the technical details of crop production. Like forestry itself, silviculture is an applied science which rests ultimately upon the more fundamental natural and social sciences. The immediate foundation of silviculture in the natural sciences is the field of silvics, which deals with the laws underlying the growth and development of single trees and of the forest as a biological unit. In silviculture, information from silvics is applied to the production of forest crops, and technical procedures are developed for the scientific tending and reproducing of these crops.

WHAT IS THE PURPOSE OF SILVICULTURE?

At Page 2 Professor Smith states:

Silviculture is normally directed at the creation and maintenance of the kind of forest that will best fulfill the objectives of the owner. Returns from silviculture are generally thought of in terms of timber production, although it is not uncommon for owners to have other goals. The growing of wood may, in fact, have low priority among these objectives or none at all. The essential thing is that the objectives should be clearly defined and the treatment shaped to their attainment. In this book greatest emphasis is placed upon the production of wood crops because this is the most common objective and also because the treatments involved are better developed and ordinarily more intricate than those aimed at other goals.

The forester should work for the good of the forest as an entity, not for the sake of the forest itself, but to ensure that it will remain a permanently productive source of goods and benefits to the owner and to society.

WHAT ARE THE OBJECTIVES OF SILVICULTURE?

Page 3

The managed forest is more productive than the unmanaged or mismanaged forest because of the advantages gained through attainment of the following objectives of silvicultural practice:

Control of composition Inferior species appear in almost any forest. One objective of silviculture is to restrict the composition of a stand to those species that are most suited to the location from the economic as well as the biological standpoint. This almost invariably means that the total number of species in a managed forest is less than that which could occur there under purely natural conditions.

Page 4

Control of stand density Improperly managed forests are commonly too densely or too sparsely stocked with trees. If timber production is an objective, both extremes are detrimental and have the final effect of reducing the value of the crop produced. -- One should seek to provide and maintain just enough trees to stock the area properly at each stage of the life of the stand.

Restocking of unproductive areas Without proper management many areas of land potentially suited to growth of forests tend to remain unstocked with trees.

Protection and salvage In unmanaged stands, severe losses are commonly caused by such damaging agencies as insects, fungi, fire, and wind, as well as by the loss of merchantable trees through competition. Substantial increases in production may be achieved merely by salvaging material that might otherwise be lost. Proper control of damaging agencies can result in further increases in production.

Page 5

Control of length of rotation In any given situation there is an optimum size and age to which timber should be grown. -- Under proper management, the optimum size or age is carefully determined and the trees harvested accordingly. The period of years required to grow a crop of timber to this specified condition of either economic or natural maturity is known as the rotation. Proper regulations of stand density can shorten the rotation by making the crop trees grow to the desired size at an earlier age.

Facilitating the harvesting, management, and use of the forest. In the unmanaged forest timber, like gold in the hills, is where one finds it; the greater the amount extracted, the more difficult and expensive it becomes to find and extract more. In the managed forest it is possible to plan the growth of stands so that any use of them is on a more efficient, economical and predictable basis. It becomes possible not only to produce good stands but also to have them so located and of such composition by species and age classes that the cost of transporting products from them is kept under control.

Protection of site and indirect benefits Proper management of forest lands often provides benefits that have little to do with production of wood. In fact, many forests are managed primarily for other purposes, although wood production is rarely inconsistent with these objectives. The techniques employed for improving the habitat of wild life and grazing animals in the forest are essentially silvicultural. To a more limited extent, the same is true of measures designed to maintain the aesthetic beauty forests used for recreation.

WHAT IS THE FIELD OF SILVICULTURAL PRACTICE?

Page 10

The subject matter of the practice of silviculture is logically divided into three parts defined as:

1. Methods of reproduction, treatment of the stand during the period of regeneration or establishment.
2. Intermediate cuttings, treatment of the stand during that portion of rotation not included in the period of regeneration.
3. Protection of the stand against injuries of many kinds. The more important are fire, insects, fungi, animals, and atmospheric agencies. This subject leads into various specialized fields, such as fire control, entomology, pathology, and zoology. Protection should be as much a part of applied silviculture as harvesting, regenerating and tending the crop.

THE STAND AND THE FOREST

Page 18

The essential unit of silviculture is the little world of the stand, which is a continuous group of trees sufficiently uniform in species composition, arrangement of age classes, and condition to be homogenous and distinguishable unit. Forest management is primarily concerned with the forest, in a special sense meaning a collection of stands administered as an integrated unit. The forest or some major subdivision thereof, is usually the smallest unit for which one can draw up logical plans designed to resolve the conflicting economic objectives and limitations implicit in any management program.

It is clear from the foregoing that:

- (1) Silviculture is a branch of forestry. Its application is confined to the forest and is usually under the direction of a professional forester or specially trained personnel.
- (2) Silviculture is an applied science. It is the art and science of growing and producing stands of timber on a basis of permanency. It includes producing and tending a forest; the treatment of a forest; and controlling forest establishment, composition and growth.

- (3) The purpose of silviculture is to ensure the maximum quality and quantity of usable timber being most economically produced in the minimum number of years from any forest stand or group of stands consistent with the continuing growth and harvesting of the forest in the years to come; or the creation and maintenance of the kind of forest that will best fulfill the objectives of the owner.
- (4) The objectives of silviculture include the control of forest composition; the control of forest stand density; restocking unproductive areas; protection and salvage; the control of the length of timber crop rotation; facilitating the harvesting, management and use of the forest; and the protection of the site.
- (5) The field of silvicultural practice is the treatment of the forest stand by proper methods of reproduction; intermediate cuttings; and the protection against injuries.
- (6) The essential unit of silviculture is the forest stand.

The persons employed at the respondent's tree nursery do not enter the forest and the persons employed in silvicultural work in the forest do not work at the tree nursery. They are distinctly separate operations. Tree nurseries are sources of supply for seedlings to be planted in the forest to assist nature in the regeneration of the cutover areas. It is the permanent planting of the seedlings in the forest itself that is the silvicultural operation and not the growing of the seedlings at the nursery.

I must find, therefore, that the tree nursery employees for whom the applicant again seeks bargaining rights are not employed in silviculture but agriculture and The Labour Relations Act does not apply to them. Accordingly, I would have dismissed the application."

6615-63-R: Oshawa Typographical Union (I.T.U.) Local 969 (Applicant) v. General Printers Limited (Respondent) v. Amalgamated Lithographers of America, Local 12 (Intervener). (GRANTED SEPTEMBER 1963)

The Board endorsed the Record in part as follows:

"In support of its application for certification the applicant submitted as evidence of membership five working cards and eighteen authorization cards with eighteen accompanying receipts. The respondent filed specimen signatures for a list of twenty-nine employees who it states were in the bargaining unit sought by the applicant on the date of the making of the application. A comparison of the union's evidence of membership with the respondent's list reveals that the five working cards and eighteen authorization cards are for persons in the bargaining unit on the date of the application. The five working cards are signed by an officer of the applicant union and indicate that monthly dues of one dollar have been paid for 1963 up to April, May or June. Four of the working cards are signed by the members and one card bears no signature. The latter working card does not meet the Board's standard as set out in subsection 1 of section 50 of the Board's Rules of Procedure and accordingly we do not give any weight to the one unsigned working card. The eighteen authorization cards bear original signatures of the employees. The receipts accompanying the authorization cards are signed by an officer of the union and are countersigned by the employee. The receipts indicate the payment of a two dollar initiation fee and one dollar for local dues. In a previous certification application made by another local of the same union the Board accepted identical authorization cards as evidence of membership. In this circumstance we are of the opinion that the applicant has not forfeited its right to certification especially since, as was stated at the hearing before the Board, the applicant in submitting the authorization card had relied on the fact of their previous acceptance by the Board. We, nevertheless, feel obliged to indicate that the Board may have to reconsider the acceptability of such authorization cards as evidence of membership on a future occasion."

PART 2

| | |
|---|-----|
| 1. Applications and Complaints to the Ontario Labour Relations Board | S26 |
| 2. Hearings of the Ontario Labour Relations Board | S26 |
| 3. Applications and Complaints disposed of by the Ontario Labour Relations Board by Major Types | S27 |
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| 5. Representation Votes in Certification Applications Disposed of by the Board | S30 |
| 6. Representation Votes in Termination Applications Disposed of by the Board | S30 |

TABLE I

APPLICATIONS & COMPLAINTS TO THE ONTARIO LABOUR RELATIONS BOARD

| | | Number of applications filed | | |
|------|---|-----------------------------------|-------------|-------------|
| | | Sept. 1st 6 months of fiscal year | | |
| | | 1963 | 63-64 | 62-63 |
| I | Certification | 63 | 378 | 400 |
| II | Declaration Terminating Bargaining Rights | 10 | 43 | 38 |
| III | Declaration of Successor Status | 14 | 18 | 9 |
| IV | Conciliation Services | 72 | 613 | 658 |
| V | Declaration that Strike Unlawful | 3 | 25 | 26 |
| VI | Declaration that Lockout Unlawful | 1 | 2 | 7 |
| VII | Consent to Prosecute | 7 | 96 | 63 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 15 | 80 | 65 |
| IX | Miscellaneous | <u>2</u> | <u>6</u> | <u>14</u> |
| | TOTAL | <u>187</u> | <u>1261</u> | <u>1280</u> |

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

| | | Number | | |
|--|--|-----------------------------------|-------|-------|
| | | Sept. 1st 6 months of fiscal year | | |
| | | 1963 | 63-64 | 62-63 |
| Hearings & Continuation of Hearings by the Board | | 98 | 539 | 602 |

TABLE III

APPLICATIONS & COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

| | | Number of appl'ns disposed of Sept. 1st 6 months of fiscal yr. | | |
|------|---|---|--------------|--------------|
| | | <u>1963</u> | <u>63-64</u> | <u>62-63</u> |
| I | Certification | 68 | 405 | 404 |
| II | Declaration Terminating Bargaining Rights | 10 | 60 | 37 |
| III | Declaration of Successor Status | - | 5 | 1 |
| IV | Conciliation Services | 72 | 631 | 629 |
| V | Declaration that Strike Unlawful | 2 | 24 | 26 |
| VI | Declaration that Lockout Unlawful | 1 | 1 | 6 |
| VII | Consent to Prosecute | 26 | 89 | 44 |
| VIII | Complaint of Unfair Practice in Employment (Section 65) | 13 | 74 | 67 |
| IX | Miscellaneous | <u>1</u> | <u>3</u> | <u>6</u> |
| | TOTAL | <u>193</u> | <u>1302</u> | <u>1220</u> |

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPES AND BY DISPOSITION

| Disposition | Sept.1st 6 mos.fiscal yr | | | Sept.1st 6 mos.fiscal yr | | |
|-------------|--------------------------|-------|-------|--------------------------|-------|-------|
| | '63 | 63-64 | 62-63 | '63 | 63-64 | 62-63 |

I Certification

| | | | | | | |
|-----------|-----------|------------|------------|-------------|--------------|--------------|
| Granted | 47 | 287 | 272 | 980 | 8075 | 7207 |
| Dismissed | 13 | 72 | 91 | 649 | 2453 | 7075 |
| Withdrawn | <u>8</u> | <u>46</u> | <u>41</u> | <u>95</u> | <u>621</u> | <u>1411</u> |
| TOTAL | <u>68</u> | <u>405</u> | <u>404</u> | <u>1724</u> | <u>11149</u> | <u>15693</u> |

II Termination of Bargaining Rights

| | | | | | | |
|------------|-----------|-----------|-----------|------------|-------------|-------------|
| Terminated | 6 | 38 | 24 | 337 | 1128 | 629 |
| Dismissed | 3 | 20 | 7 | 24 | 490 | 203 |
| Withdrawn | <u>1</u> | <u>2</u> | <u>6</u> | <u>76</u> | <u>85</u> | <u>192</u> |
| TOTAL | <u>10</u> | <u>60</u> | <u>37</u> | <u>437</u> | <u>1703</u> | <u>1024</u> |

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

APPLICATIONS DISPOSED OF BY
BOARD (continued)

Number of appl'ns disposed of
Sept. 1st 6 mos. fiscal year
'63 63-64 62-63

III Conciliation Services*

| | | | |
|-----------|-----------|------------|------------|
| Referred | 67 | 591 | 567 |
| Dismissed | - | 11 | 12 |
| Withdrawn | <u>5</u> | <u>29</u> | <u>50</u> |
| TOTAL | <u>72</u> | <u>631</u> | <u>629</u> |

IV Declaration that
Strike Unlawful

| | | | |
|-----------|----------|-----------|-----------|
| Granted | 1 | 3 | 6 |
| Dismissed | - | 3 | 7 |
| Withdrawn | <u>1</u> | <u>18</u> | <u>13</u> |
| TOTAL | <u>2</u> | <u>24</u> | <u>26</u> |

V Declaration that
Lockout Unlawful

| | | | |
|-----------|----------|----------|----------|
| Granted | - | - | 1 |
| Dismissed | - | - | 4 |
| Withdrawn | <u>1</u> | <u>1</u> | <u>1</u> |
| TOTAL | <u>1</u> | <u>1</u> | <u>6</u> |

VI Consent to
Prosecute

| | | | |
|-----------|-----------|-----------|-----------|
| Granted | 1 | 20 | 10 |
| Dismissed | 2 | 7 | 6 |
| Withdrawn | <u>13</u> | <u>62</u> | <u>28</u> |
| TOTAL | <u>16</u> | <u>89</u> | <u>44</u> |

*Includes applications for conciliation services re unions
claiming successor status.

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE BOARD

| | Number of Votes | | |
|----------------------------------|-----------------|-----------------------|------------------|
| | Sept. '63 | 1st 6 months of 63-64 | fiscal yr. 62-63 |
| <u>*Certification After Vote</u> | | | |
| pre-hearing vote | 2 | 12 | 18 |
| post-hearing vote | 2 | 29 | 13 |
| ballots not counted | - | - | 2 |
| <u>Dismissed After Vote</u> | | | |
| pre-hearing vote | - | 8 | 12 |
| post-hearing vote | 5 | 31 | 27 |
| ballots not counted | - | 1 | 1 |
| TOTAL | <u>9</u> | <u>81</u> | <u>73</u> |

*Includes applicant - intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE BOARD

| | Number | | |
|-------------------------------|-----------|-----------------------|------------------|
| | Sept. '63 | 1st 6 months of 63-64 | fiscal yr. 62-63 |
| *Respondent Union Successful | - | 5 | 5 |
| Respondent Union Unsuccessful | <u>3</u> | <u>20</u> | <u>6</u> |
| TOTAL | <u>3</u> | <u>25</u> | <u>11</u> |

*In termination proceedings where a vote is taken, the applicant is a group of employees, or the employer; the incumbent union is thus the respondent.

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